

1 (Brief recess.)

2 MR. CHAIRMAN: We have a couple of
3 commissioners who will be coming back in.

4 PRESERVATION AND COLLECTION OF EVIDENCE

5 Our next panel will be addressing the issue of
6 the collection and preservation of evidence in
7 sexual abuse cases. If the two of you could please
8 identify your yourselves.

9 MS. SWIENTON: Good afternoon. Anjali
10 Swienton with the National Clearinghouse for
11 Science, Technology, and Law at Stetson University
12 and also SCiLaw-Forensics.

13 MS. HOLLAND: And my name is Leann
14 Holland from Sparrow Hospital. I am a forensic
15 nurse.

16 THE CHAIRMAN: We have two other
17 witnesses? Okay. Why don't you sit on this side
18 because I think we're going to start here and move
19 from right to left. And could the two of you
20 identify yourselves? I assume you're from the
21 Detroit Police Department?

22 MR. KANE: Yes, sir.

1 THE CHAIRMAN: Okay. Thank you for
2 showing up on such short notice.

3 OFFICER KANE: My name is Robert Kane.
4 I'm a Detroit police officer. I work in the Sex
5 Crimes Unit.

6 THE CHAIRMAN: Thank you.

7 SERGEANT BABCOCK: Good afternoon. I'm
8 David Babcock. I'm a sergeant with the Crime Scene
9 Services of the Forensic Service Section in the
10 City of Detroit Police Department.

11 THE CHAIRMAN: Could you please stand and
12 take the oath?

13 (Panel sworn.)

14 THE CHAIRMAN: Ms. Swienton.

15 MS. SWIENTON: Good afternoon again, Mr.
16 Chairman and the Commission. I appreciate the
17 opportunity to address you.

18 I should preference my comments by stating
19 that unlike just about everyone else we've heard
20 from today, I have no experience dealing with rape
21 behind bars specifically. My background is in
22 forensic DNA as an analyst, so that capacity I've

1 worked hundreds of cases where sexual assault was
2 the alleged crime from jurisdictions all over our
3 country. And in identifying biological evidence,
4 the issues are very similar regardless of where the
5 act occurred, although when we talk about assault
6 that may have happened in an incarcerated
7 situation, there are some issues that will be
8 unique.

9 And I should probably make an apology right up
10 front that my remarks are probably going to pose
11 more questions on these issues than I will have
12 answers to provide you because there are so many
13 complicating issues when you look at sex assault
14 beyond bars.

15 But, a little bit about DNA. With today's
16 technology, unless somebody has an identical twin,
17 we are at the point where we can fairly,
18 accurately, uniquely identify individuals. It's
19 become a very powerful tool at law enforcement's
20 disposal for the crime laboratories to use and we
21 are able to use this technology to identify those
22 involved in crimes, but also to exclude those that

1 may be falsely accused and, as I'm sure we're all
2 aware, to also exonerate those who may have been
3 wrongfully convicted.

4 In cases of sexual assault where the
5 perpetrator is unknown, DNA has proved to be of
6 great assistance helping to identify recidivist
7 offenders through Cold Heads on CODIS, which is our
8 nation's national DNA database. Although unlike on
9 CSI, which does not necessarily accurately portray
10 what our nation's crime labs can and can't do.
11 When you get a hit on CODIS, you don't
12 automatically get a photograph of the perpetrator
13 and their address and, you know, what they ordered
14 for dinner the previous night. So, if they come up
15 with one of those machines, I want to get one, but
16 we've come a long way.

17 Even in cases where identity is not, perhaps,
18 the main issue, for example, if a suspect admits to
19 having sexual contact with a victim, but claims
20 that the contact was consensual, or if a victim
21 reports an assault, but then later recants for
22 whatever reason, DNA may still be able to provide

1 value. In those instances, the presence of DNA may
2 become less probative to merely identify the
3 perpetrator, but may still be able to corroborate
4 an initial claim of force or nonconsent if found in
5 atypical places such as underneath the fingernails
6 of a victim. This may help to substantiate a claim
7 of indicating resistance or self-defense.

8 However, and this is probably the main thrust
9 of my testimony this afternoon, as powerfully as a
10 tool as it may be, DNA is useless to us if the
11 evidence is never collected. We need one protocol
12 for the collection of sexual assault evidence so
13 that all relevant evidence is collected before
14 there have been further unnecessary chances for
15 contamination and loss.

16 Once all the evidence is identified, collected
17 and preserved, we can then use this science to
18 narrow the gap so that trials are no longer just
19 the victim's word against the perpetrator's word.
20 If it's properly identified, collected and
21 preserved, the science of DNA can provide the
22 necessary proof to substantiate victim stories.

1 And that's even more pressing when we're talking
2 about a situation where some of the perpetrators
3 may be those in authority.

4 Because of the vagility and sensitivity of DNA
5 evidence, in the absence of sound collection
6 protocols, we risk contaminating vital evidence
7 either while or -- either before or while it is
8 being checked.

9 Currently, if an inmate of either a jail or a
10 prison reports a sexual assault, that inmate may be
11 transported from one site to other another or to
12 several other sites before that inmate is actually
13 seen and examined. At all of these junctures, we
14 are losing potential vital evidence.

15 Again, I told you that I may be posing
16 questions and here's my first one. How sanitary
17 are the areas in which these inmates are being
18 examined? What opportunities for contamination
19 exist from any other people they may come in
20 contact along the way, including caregivers,
21 employees and other inmates that may have access to
22 common areas?

1 Following an initial treatment on site, these
2 victims may then be further transported off site to
3 a hospital for medical exams either by sane nurses
4 or emergency room physicians. You're going to hear
5 from a sain nurse this afternoon and that is the
6 optimal situation where someone with specific
7 training in identifying and collecting sexual
8 assault evidence from a victim is available. But
9 in the absence of a scene or in jurisdiction where
10 scenes are not present, how well are those that
11 perform rape exams trained in all aspects of the
12 actual exam?

13 Although an emergency room physician may be
14 trained to identify injury consistent with sexual
15 assault, we all know that not every sexual assault
16 results in outward signs of injury. How well may
17 we be trained in evidence collection, packaging and
18 preservation? How comfortable will a physician be
19 if they are later called to testify about any of
20 the processes? What additional issues may be
21 involved if the victim was incarcerated during the
22 time of assault as opposed to, on the outside, sex

1 assault? Will the exam be conducted with law
2 enforcement present and, if so, will that affect
3 how forthcoming or truthful the victim may be
4 during the examination or interview process?

5 If a victim is unable to be adequately
6 examined at the prison earlier in the process or
7 closer to the time of the event, how much time are
8 we talking about that would have elapsed between
9 the time of the event, the reporting, and the
10 eventual examination or collection of evidence?
11 Could it be hours? Could it be days? Will this
12 affect the ability to recover probative evidence
13 and obtain usable DNA profiles to aid with the
14 investigation? Almost certainly, yes, it would.

15 Because biological evidence breaks down over
16 time, and current testing methods are sensitive,
17 they still require a cut-off amount, a threshold
18 amount, of starting biological material. This
19 means that in order to be useful, it must be
20 quickly identified, collected and properly
21 preserved.

22 Where might be find relevant evidence of the

1 biological kind? We would certainly find it on a
2 victim if the person reported and was examined in a
3 timely manner. But there can also be very useful
4 biological evidence recovered from a bathroom, a
5 cell, any common area at the jail, and also on the
6 person of the suspect if that person is identified
7 and examined in time. We'd have to get to that
8 suspect before any evidence was either purposefully
9 washed away or inadvertently lost.

10 We know especially those on the outside that
11 have access to things like CSI are becoming more
12 educated about biological evidence. And suspects
13 have known to wear gloves and now condemn when
14 they perpetrate crimes so as not to leave portions
15 of themselves behind. However, with sexual assault
16 behind bars, these types of materials may not be
17 available to those that commit these crimes and,
18 hopefully, the amount of biological evidence that
19 is available for collection would still be present.

20 Immediate collection is critical since the
21 evidence is fungible and will further degrade or be
22 hopelessly contaminated or lost if not collected

1 quickly. And this is especially exacerbated in
2 somewhere like a prison where there is access to
3 common areas in a high density of inmates.

4 In addition to quick collection of evidence,
5 and this is perhaps a policy recommendation that
6 the Commission could take under advisement,
7 evidence collection teams, if possible, should be
8 sought that are not necessarily on site or
9 affiliated with the institution since oftentimes
10 those that are accused of committing sex assault
11 behind bars are employees or those in authority.

12 We must remember to always collect the
13 evidence first and ask questions later. We have to
14 collect the evidence as soon as possible. And the
15 investigation, which we've heard several witnesses
16 testify about earlier today, can take sometimes
17 weeks or months. And that is just unfortunately
18 where we are in today's resources. Nothing happens
19 in 42 minutes like it happens on CSI. You may
20 notice that's a recurring theme of my testimony.
21 But if we collect the evidence first and later,
22 through other investigatory stages, find out that

1 the claim was unfounded, further resources don't
2 have to be wasted on testing the evidence. But if
3 we don't collect it and later on the investigation
4 bears fruit, we may never have the opportunity to
5 corroborate those stories because there's simply
6 nothing to test.

7 The evolution of DNA technology is at a point
8 where we need a very, very small amount of
9 biological material in order to get a full genetic
10 profile to uniquely identify someone. Scientists
11 even use the term "touch evidence," which means
12 that all of you are leaving your DNA on the podium,
13 as well as the rest of these witnesses in their
14 chairs behind me. However, this sensitivity also
15 presents a double-edge sword to the criminalist.
16 Although we only need a small amount of DNA to get
17 successful results or probative results, this also
18 means that just a trace amount of DNA that may be
19 inadvertently left by evidence collectors,
20 caretakers, employees, family members or anyone
21 else that had legal access to a scene, could
22 contaminate the evidence and confound the

1 interpretation of any biological test results.

2 We know in sex assaults that we usually get a
3 mixture of biological profiles. In almost every
4 instance where sexual assault occurs, we would get
5 genetic profiles of both the victim and the
6 perpetrator. In a situation such as sex assault
7 behind bars, that may be further confounded by
8 small amounts of DNA again from anyone else in the
9 area. However, the positive side of this is that
10 on any evidence where we may find a mixture of both
11 perpetrator and suspect, we can link the suspect to
12 the victim and the victim to the suspect or one or
13 both of the actors to a particular scene where,
14 perhaps, an alleged assault occurred.

15 In addition to DNA, certainly other forensic
16 evidence that may be helpful in identifying a
17 perpetrator of an assault or in tying a victim or a
18 perpetrator to a specific area should also be
19 adequately collected. These can include hairs and
20 fibers, latent prints, clothing, weapons, tool
21 marks and, potentially, bite marks.

22 To ask shift gears for just a moment, I ask

1 another question. What would motivate an inmate to
2 falsely claim they had been sexually assaulted?
3 I'm sure we could all think of a few things, but in
4 general, and most commonly, this allegation would
5 either not be taken seriously or an exam may be
6 begun or conducted, but with no resulting changes
7 in behavior such that the person who claimed to
8 have been assaulted was not taken out of the
9 general population and merely by claiming they were
10 assaulted may be subjecting themselves to further
11 acts of retaliation.

12 A victim is a victim regardless of any prior
13 acts or their situation at the current time that
14 they report and, therefore, all claims of sexual
15 assault must be given the benefit of the doubt and
16 afford of due diligence. Steps must be taken to
17 encourage those weary of reporting to come forward.
18 And you've heard a lot of testimony along those
19 lines already today. Incentives should be given in
20 the way of support and protection to victims and
21 repercussions must be levied on those that prey on
22 the weak and defenseless, whether the attacker be

1 another inmate, an employee of the facility, or
2 someone in a position of power.

3 There used to be a time when it was not
4 illegal or was not a crime to be forced to engage
5 in sex with a spouse. There was no such thing as
6 spousal abuse. We didn't prosecute it. If you
7 were married to the abuser, you had no recourse.
8 However, we as a society have evolved beyond that
9 position and now advocate that every individual has
10 a right to consent or refuse to participate in
11 sexual acts. However, I know we all know that rape
12 is not an act of sex. It is an act of violence and
13 domination. In a lock down situation, it may have
14 even further meaning to publicly assert those in
15 positions of power as dominant or to leverage an
16 existing imbalance of power for personal gain.

17 Regardless of the attitude held by some,
18 perhaps, towards incarcerated individuals that they
19 may have diminished rights, if convicted of crimes,
20 any victim of a crime deserves to have their claims
21 investigated.

22 Some issues that may be unique to sexual

1 assault occurring behind bars, unlike stranger
2 sexual assault, victims of sexual assault in
3 incarcerated situations will usually know who their
4 attackers are. Even if they are unable or
5 unwilling to identify the attacker, since there is
6 a finite population of inmates, employees and
7 visitors, all persons with access to the victim
8 during the time frame the attack occurred can
9 usually be identified and required to give
10 elimination samples for comparison with any DNA
11 evidence obtained from the victim. Even though
12 suspects are limited, if, in fact, the suspect was
13 another inmate, they may already have submitted DNA
14 samples for inclusion in CODIS, depending on what
15 they were convicted of and what the laws in that
16 jurisdiction were.

17 In fact, I'm willing to go one step further
18 and suggest that to facilitate ease of identifying
19 those involved in such crimes, perhaps we should
20 require submission of samples of anyone working in
21 a facility to have DNA samples on file for
22 comparison or elimination, much like we do with

1 fingerprints. It may require a paradigm shift to
2 require this, and it may come up against some
3 resistance, I would imagine that it would, to
4 require anyone, even if they weren't convicted of a
5 CODIS qualifying offense, to submit a sample. And
6 although it may increase our backlogs currently in
7 the labs, and involve more time and money up front,
8 ultimately we could be saving time, money and, more
9 importantly, lives, especially if those whose
10 samples are on file know that they're on file and
11 could be quickly identified if they commit one of
12 these types of crimes behind bars.

13 In addition, the sanitary conditions of areas
14 where these types of attacks occur can complicate
15 the interpretation and can lead to additional
16 contamination. This needs to be factored in to any
17 interpretation of results that labs may provide
18 from DNA testing. And because DNA testing at the
19 current time, and I'll qualify it there, is unable
20 to tell us when DNA was deposited on an item,
21 additional complications with interpretation of
22 results may ensue because we know it's not unusual

1 to find DNA from persons who might have been at the
2 scene. Body swabs, for instance, are probative,
3 but how probative is evidence recovered from other
4 areas like the floor or the wall?

5 Lastly, even when a victim's story says there
6 was no crime, the evidence may be able to counter
7 this. A trained saine nurse may be able to
8 recognize tears or signs of a struggle, resistance
9 or force even if the victim refuses to admit. All
10 members of the investigation and caregiver team
11 must consider the totality of the evidence to piece
12 together what actually happened, identify who is
13 responsible, hold them accountable and provide
14 follow-up care for all victims.

15 Thank you.

16 THE CHAIRMAN: Thank you.

17 MS. HOLLAND: Good afternoon, everybody.
18 Thank you for the honor of speaking here. And I
19 want to take a moment and kind of step back. We're
20 talking about rape, but I wanted to take a moment
21 and step back. Sexual assault nurse examiner is
22 one of the certifications that I have, and I wanted