

1 to the right. If you'd identify yourself and then
2 we'll proceed with the testimony.

3 DOCTOR JAMES AUSTIN: My name is James
4 Austin. I'm the president of JFA Institute, which is
5 a private, not for profit research organization,
6 headquartered in Washington, D.C.

7 I'm here because, in 2004, my research
8 firm was awarded a grant from the National Institute
9 of Justice to do an evaluation of the Texas program of
10 sexual assault within the Texas Department of Criminal
11 Justice.

12 I'm going to -- I submitted written
13 testimony, but in the sake of brevity, I'm going to
14 hit what I think are the highlights of the evaluation
15 and things I want the Commission to focus on.

16 As everyone should know, Texas has the
17 highest number of sexual allegations being made in the
18 country. Each year about five to 600 allegations of
19 sexual assault are being made. These are
20 inmate-on-inmate. There is another 50 or 60 where
21 it's staff-on-inmate. Our study narrowly focused on
22 the inmate-on-inmate assaults. We did not have enough
23 cases to look at the allegations of staff-on-inmates.

24 I also want to make a couple of points,
25 which is not in my testimony, which I think is

1 important. My research was severely restricted in
2 terms of what we could look at because of what's
3 called human subject review. We're not allowed,
4 through the IRB process, to talk to prisoners or staff
5 who have been involved in sexual assaults as part of
6 the research agenda. So I would really urge the
7 Commission, if they could, to look into this, because
8 it's really restricting what researchers can do in
9 terms of evaluating the impact of these procedures.

10 The second thing is that, on the issue
11 of the database that the Texas system has. It's an
12 excellent database, but there are some things in their
13 database that could be improved in terms of access,
14 which I'll comment on later, which I think would
15 improve their ability to monitor and deter sexual
16 assaults from occurring.

17 That aside, we looked at 2,000
18 officially-reported sexual assaults that occurred
19 between 2002 and 2005. As I mentioned, they had the
20 highest number of alleged incidents. It produces a
21 rate of about four per 1,000 inmates per year. This
22 is four times the national average. It also has the
23 lowest substantiation rate. So it has the highest
24 number being reported and its rate of sustaining those
25 is the lowest among in the country.

1 Historically, they've always had a high
2 number of sexual assault allegations being made. In
3 1993, when they first started reporting it, it was
4 about one per 1,000 inmates, up until about 2001, and
5 then it started to escalate. And this coincides with
6 the passage of the Safe Prisons Program in 2002. So
7 since they've implemented the program, the number of
8 allegations has increased substantially.

9 Now, this is purposeful to some degree,
10 because, one of the goals of the Act is to increase
11 the reporting of allegations. The question is, you
12 know, are these allegations true in nature or are they
13 unfounded. And that's something that the research
14 couldn't really address very well. We do have some
15 good information about why we think some of the
16 allegations are difficult to substantiate.

17 One of the major reasons is that the
18 allegations by the inmates are not being reported in a
19 timely manner. Only 30 percent are reported within
20 the same day, and often have no independent witness to
21 the allegation. So this delay in reporting and the
22 absence of witnesses makes it very difficult to
23 sustain an allegation.

24 Another important statistic was that
25 most of these allegations are reported to have

1 occurred in cells. They are not occurring in the
2 dormitories. So it's the cellblocks that are the most
3 dangerous places for these allegations of sexual
4 assault that occur.

5 Over 50 percent of the sustained cases
6 involved forensic evidence from a rape kit or forensic
7 exam. On the other hand, rape kits and forensic exams
8 were performed in only 20 of the alleged sexual
9 assaults. A primary reason for not completing the
10 exam was time lapse, so anything that can be done to
11 get the forensic evidence collected in a more timely
12 manner would have a tremendous impact on the
13 substantiation problem.

14 On the attributes of the victims and
15 the assailants, what we found pretty much mirrors
16 what's been found in other studies. First of all, a
17 very small percent of the prison population as
18 classified as a victim or assailant, about two
19 percent. This is important from a research point of
20 view because if you're trying to predict who is going
21 to be an assailant or who is going to be a predator,
22 you can't do it statistically. There is not enough of
23 what we call a base rate of identification. So trying
24 to come up with a model that says, when someone comes
25 in, they are very likely to fall into one of these two

1 categories is probably not going to work. What you
2 can do, though, and I'll talk about this at the end,
3 is a checklist of potential factors that we know are
4 associated with this phenomenon, and that would be
5 useful to do.

6 White inmates are attacked more
7 frequently than any other race, about 60 percent,
8 while two-thirds of the assailants were involving
9 black assailants. 19 percent were Hispanics and --
10 I'm sorry. 19 percent being Hispanic assailants, and
11 12 percent white assailants.

12 In general, the victims are three to
13 four years younger than the assailants. Although only
14 12 percent of the allegations involved a mentally ill
15 or intellectually impaired prisoner, this is eight
16 times their proportion in the population. So people
17 that have this kind of factor are much more likely to
18 become victimized.

19 We also found that within the
20 safekeeping units, there was a high rate of
21 victimization going on. And this was explained, we
22 think, by the fact that prisoners that are requesting
23 protective custody, who have been victimized or
24 attempt has been made to victimize them, when they go
25 into protective custody, they themselves become the

1 predators on the weaker inmates that are in the PC
2 units. So it's important when departments create
3 these protective custody units, that they're
4 separating within that unit people that might be
5 victimizing further, or people that might become
6 assailants.

7 If we looked at the management
8 techniques of housing units that separated so-called
9 high-rate facilities and low-rate facilities, we found
10 a number of things that we think are relevant to your
11 work.

12 First, in Texas, staff at all levels
13 were found to have a clear understanding of the
14 organization's expectations and goals as it related to
15 the Safe Prisons Program requirements. So all the
16 training they're doing is taking hold, staff are aware
17 of it, they know what the objectives are, so that's a
18 good, positive sign. We didn't find any indication of
19 organizational indifference at any of the facilities.
20 However, there may be some individuals, obviously,
21 that that still have that perspective. But,
22 basically, staff seemed to be aware of what they're
23 trying to do and the value of doing that.

24 Solid cell fronts, while permitting
25 privacy for the inmates and reducing noise within the

1 unit, also provides a degree of privacy that prevents
2 sexual assaults to occur. So it's these old,
3 traditional cell doors that we think need to be
4 replaced, or management needs to take a more proactive
5 response if they have large numbers of cellblocks with
6 these solid cell fronts.

7 Most of the assaults occurred between
8 6:00 a.m. and 6:00 p.m., during the day, in the
9 cellblocks. And what is happening, we believe, is
10 that because of all the activity that's going on,
11 staff are easily distracted from what is going on in
12 individual cells and that's when the sexual assaults
13 are occurring.

14 Now, I want to conclude by making a
15 number of, I think, important points, and I'll let the
16 other speakers make their presentation.

17 I think it's important to understand,
18 in our perspective, what we found is that prison rape
19 needs to be seen in the larger context of assault,
20 aggressive behavior going on in prisons. The persons
21 that were labeled as predators had lengthy
22 disciplinary records, not only in sexual assault, but
23 also in other kinds of coercive behavior. So just
24 overall management of the prison is what we're looking
25 for. That will reduce sexual assault and other bad

1 indicators in prison operations.

2 There are some specific recommendations
3 that we made to Texas, and I'm making to other
4 correctional systems that I don't believe have been
5 implemented as of yet, but I think, if they were, they
6 would reduce sexual assaults.

7 First and foremost, there are what I
8 call structured routine activities that go on in any
9 prison where we need to take advantage of them to
10 allow the prisoner to report in a confidential manner,
11 are they being assaulted, are they being threatened.
12 This is a technique that we used successfully in a
13 number of litigation matters that I've been involved
14 with which reduces the rate of this -- of assaults in
15 general occurring. So, for example, when case
16 managers meet with their inmates, they should always
17 be asking them, are you being threatened? Is anyone
18 threatening you? Are you being assaulted? Are you
19 seeing any of this activity going on? That is not yet
20 a structured routine in the Texas prison system, and I
21 think it could be easily implemented.

22 On the issue of data sharing, they have
23 an excellent database, but if you're at a particular
24 unit, you can only see the allegations that are
25 occurring for your unit. You can't see the

1 allegations that are occurring statewide. This may
2 have changed, but when we finished our study in 2005,
3 that was the situation. That means you can't see all
4 the information that's going on about sexual assault,
5 which I think would be very valuable to the system.

6 There -- we were concerned on what
7 happens to prisoners who make an allegation but the
8 case cannot be substantiated. There are a large
9 number of these cases in Texas. You know, it's the
10 vast majority. When that occurs, what they tend to do
11 is to transfer the person to another unit, but there
12 is not sufficient follow-up in terms of, what is going
13 on with that case, what was the nature of that
14 allegation, why are we transferring this person. In
15 some cases, it could almost become a punishment. You
16 report something, we're going to transfer you to
17 another place. That could disrupt visitation, jobs,
18 et cetera. So that technique needs to be evaluated.

19 The low rate of officially reporting
20 sexual assault on prisoners means that it's not
21 practical nor recommended that a traditional risk
22 scoring system be attempted. What we are
23 recommending, and I attached to my testimony a
24 checklist, that can be applied to every prisoner
25 coming into the system. Texas does not have a

1 checklist. Very few people have this kind of a
2 checklist. The reason we want a checklist is because
3 it's more objective in looking at every case in the
4 same manner. And if you get a certain number of
5 checks on that checklist, that would indicate that
6 you're a potential victim or a potential predator, and
7 that would be helpful, I think, in making sure that
8 nothing slips through the cracks.

9 Finally, we want to acknowledge that
10 our research did not address the issue of sexual
11 assault among female prisoners. It was commonly
12 stated to us in Texas that the rate of sexual activity
13 among the female prisoners is substantially higher
14 than it is among the men. And the perception,
15 unfounded, is that it's largely consensual. I don't
16 think we know that, and I think we need to investigate
17 much more in depth what is going there among the
18 female prisoners, which is an area of research that
19 has yet to be conducted.

20 Thank you.

21 CHAIRMAN WALTON: Thank you very much.

22 Ms. Luna.

23 MS. LISA LUNA: Good afternoon. My
24 name is Lisa Luna. I'm a training specialist with the
25 Texas Association Against Sexual Assault. I'm also a