

1 in and out of other cells than they would after 6:00
2 p.m.

3 CHAIRMAN WALTON: Thank you.

4 Ms. Graybill, thank you -- you're not
5 late. We started early.

6 Would you take the oath.

7 (Witness sworn.)

8 CHAIRMAN WALTON: Thank you.

9 MS. LISA GRAYBILL: Thank you.

10 CHAIRMAN WALTON: But you're not late.
11 We started early.

12 MS. LISA GRAYBILL: I feel better.
13 Thank you.

14 My name is Lisa Graybill. I'm the
15 Legal Director at the ACLU of Texas. I've been here
16 for two years. Before that and I was at the U.S.
17 Department of Justice, also doing prison work.

18 I was asked and plan to speak
19 specifically to Texas's Safe Prison Program. And my
20 review is primarily based on the manual that we
21 obtained via an Open Records Request. The last
22 iteration of that manual that I was able to get is
23 from 2005. And the manual is laid out, I believe,
24 into six sections. It concentrated the review on
25 three, which are prevention, intervention, and then

1 investigation.

2 Some of my comments are certainly
3 framed by the experience that Margaret and I shared
4 working on the Johnson litigation, but I tried to set
5 most of that aside and really focus on the way the
6 manual is now, because the Johnson litigation predated
7 this iteration of the manual.

8 We have particular concerns. I would
9 say, overall, the manual is certainly an important
10 step at both acknowledging the problem that exists in
11 Texas and laying out at least a preliminary strategy
12 to address it. For the ACLU of Texas, the primary
13 vehicle of information that we get, the way we receive
14 information about what is actually happening inside
15 the prison facilities is via inmate complaints. And
16 we have a web-based complaint system, which doesn't
17 particularly serve inmates in state facilities, who
18 largely do not have access to the Internet, but many
19 of their friends and relatives do. And we also accept
20 complaints via letter.

21 So we receive somewhere in the range of
22 2,000-plus inmate complaints a year, and that's by
23 letter, and then an additional probably 500 or so by
24 computer. So it's through those complaints, which
25 are, of course, anecdotal, that we get a sense of what

1 is going on. And regrettably, I would say that based
2 on our complaint load, it appears that despite the
3 strides made by the implementation of the Safe Prison
4 Program, there is space for improvement still.

5 And I would concentrate my comments in
6 the three areas, again, of prevention, intervention,
7 and then investigation.

8 With regard to prevention -- actually,
9 I would like to just start by reading something that
10 struck me. At the beginning of the Safe Prison
11 Program, I felt like this put in context the
12 assumptions with which the prison program is made.
13 And this is the introduction to the 2005 version.
14 These are the -- this is the statement:

15 "An offender does not have to prove his
16 life is in danger to obtain protective custody,
17 safekeeping status, or one of the other options
18 available for protecting offenders.

19 "An offender does not have to undergo
20 assault before receiving protection.

21 "An offender does not have to fight his
22 predator in order to receive protection, and sexual
23 abuse should not be a way of life in prison."

24 The fact that that was the initial
25 statement or introduction to the Safe Prison Program

1 told me that TDCJ is still operating with the
2 assumption that sexual abuse is, in fact, a way of
3 life and they need to make a statement. Those
4 statements are in the negative. They don't talk about
5 the offender's right to serve their time protected
6 from harm by -- that's the constitutional obligation.
7 They don't talk about the offender's right to file a
8 complaint and have a grievance promptly addressed.
9 Instead, the rights are all framed in the negative,
10 and I thought that set the tone for the rest of the
11 manual.

12 With regard to prevention, we are
13 concerned about two things. One is that there is sort
14 of a labyrinthine process set forth in the Safe Prison
15 Program Manual, where is various cycles of
16 accountability and reporting and forms, but it's --
17 the only person who has clear responsibility and
18 accountability is the Safe Prison Program Coordinator,
19 the Unit Safe Prison Program Coordinator. And that
20 single individual, that person, is not necessarily a
21 dedicated staff position. That can be an individual
22 who has multiple tasks, and when you're talking
23 about -- when you're talking about facilities with
24 from 500 to 1500 inmates, not even having one
25 dedicated staff member and with no particular training

1 identified in the manual to serve as essentially the
2 gatekeeper to all the resources and services that are
3 available for victims of alleged assault, we think is
4 inadequate and will not -- will not perform the
5 preventative function. Despite the fact that the plan
6 is well laid out in the manual, we just don't think
7 one person can do that.

8 With respect to intervention, and I'm
9 sure this is not a surprise and that you've heard
10 testimony on this from other folks, but the offenders
11 that contact us most repeatedly request, they complain
12 that they were very clear about their history as
13 victims and their vulnerabilities, but were
14 nonetheless denied an initial placement in protected
15 custody. And then they complained that once they were
16 victimized, despite repeated attempts and begging for
17 being placed in protective custody, in either
18 safekeeping or in add seg, which is not very desirable
19 housing. That's where, you know, inmates are locked
20 down 23 hours out of 24, and it's reserved for -- it's
21 punitive for many offenders. But many of the folks
22 that we are -- we received correspondence from have
23 repeatedly asked for either, but are denied based on
24 criteria that are never spelled out, to the extend
25 that I've reviewed unit classification reports.

1 Finally, with respect to investigation,
2 one of the things that concerned us in our review of
3 the prison program manual is that, whereas there are
4 some substance requirements and recommendations in the
5 prevention and intervention section, the investigation
6 section is almost entirely procedural. It talks about
7 who has to fill out which form within X period of time
8 and provide to whom. But there is little substantive
9 guidance given as to how an investigation into sexual
10 assault should be completed and conducted.

11 A requirement, for example, to
12 interview potential witnesses among either inmates or
13 staff is not included. In fact, the threshold for
14 assessing an inmate's request for safekeeping is a
15 thorough investigation, but the threshold for
16 investigating the actual allegation of sexual assault
17 is just an adequate investigation.

18 And we recommend -- we are currently
19 supporting some legislation that is pending in the
20 Texas legislature right now, which would, among other
21 things, establish an outside agency to review and
22 investigate assaults. Which it is our belief that
23 that is critical and that, in fact, only through the
24 establishment and adequate empowerment and funding of
25 such an outside agency will the functions that we just

1 reviewed in terms of prevention, investigation,
2 classification, be managed such that the incidence of
3 prison rape in Texas will be reduced.

4 Thank you.

5 CHAIRMAN WALTON: Thank you very much.

6 Ms. Winter.

7 MS. MARGARET WINTER: Yes. I'm

8 Margaret Winter, the Associate Director of the

9 National Prison Project of the ACLU.

10 And my office has investigated scores
11 of prison rape complaints from around the country, but
12 the majority of them from Texas. And through
13 interviews with scores and dozens of prison rape
14 victims and eyewitnesses to prison rape and through
15 depositions and through review of thousands of
16 internal investigative reports of prison rape
17 complaints, we begin to see patterns emerge that would
18 explain, at least in part, the extraordinarily high
19 incidence of rape in Texas prisons.

20 In a nutshell, it strongly seems to
21 emerge that the -- the chief problem is one of
22 attitude, an attitude of denial. And that's why I
23 think the work of this Commission is so tremendously
24 important. Widespread public exposure of the problem
25 is required because in many parts of the country, and