

1 staff to use in any manner they feel appropriate.

2 And with that I would close my comments
3 and be glad to answer any questions you may have.

4 CHAIRMAN WALTON: Thank you.

5 In reference to the work that you do,
6 how receptive have the -- has the law enforcement
7 community been to your efforts?

8 MS. ELIZABETH LAYMAN: Actually, it's
9 been very interesting because they have been extremely
10 receptive. Once we have informed them of the
11 application of PREA to their facility, they are --
12 they are just hungry for information and for the
13 training procedure -- the training things that we're
14 going to be providing. So the response has been very
15 positive. It's definitely been cooperative.

16 CHAIRMAN WALTON: You said a couple of
17 things which we've heard throughout all of these
18 hearings, which is somewhat inconsistent with what we
19 have been told we can do. Because you say, for
20 example, overcrowding is a problem. And you say, for
21 example, that insufficient staff is a -- and those
22 things, obviously, to address them entail money. I
23 don't perceive that any time in the near future we're
24 going to see the prison population go down. I just
25 don't think that's going to happen. If anything, it's

1 probably going to increase. So, I mean, can we really
2 make recommendations that are going to have a systemic
3 impact on this problem if we aren't saying to
4 Congress, look, money has to be also allocated to
5 address some of these problems.

6 MS. ELIZABETH LAYMAN: Well, I
7 certainly think that that's quite possible and I think
8 it's something that's very important to do. I don't
9 think you're ever going to hear any prison or jail
10 system say that they don't have overcrowding problems.
11 So I just think that's just an ongoing problem that is
12 not something that the Commission really can address,
13 but the agencies just have to prioritize.

14 Part of the issue with this -- with
15 PREA and its implication for lock-ups has that it has
16 not been a priority before. So I think making it a
17 priority will, of course, then possibly change the way
18 the funding is used. I mean, I can't speak for the
19 agencies and how they budget their money, but making
20 this a priority on their -- putting it on their radar
21 screen, I think, may change how they actually consider
22 their funding. I think that's important.

23 COMMISSIONER KANEB: Mr. Gotschalk.

24 MR. GEORGE GOTSCHALK: Yes, sir.

25 COMMISSIONER KANEB: Am I pronouncing

1 that correctly?

2 MR. GEORGE GOTSCHALK: You're doing
3 well. Thank you.

4 COMMISSION KANEB: I'll try to do even
5 better. Gotschalk?

6 MR. GEORGE GOTSCHALK: Gotschalk. Like
7 you've got a piece of chalk.

8 COMMISSIONER KANEB: You observed that
9 there is a myriad of certification, training
10 requirements among various jurisdictions. What about
11 the Federal system? Should I assume that it has clear
12 certification, training -- or training and
13 certification criteria?

14 MR. GEORGE GOTSCHALK: I would suggest
15 that you not consider that. And I would suggest that
16 by using D.C. as an example, and it's only been in the
17 last few years that the District of Columbia has had
18 some kind of POST commission to work with establishing
19 any kind of training standards for the District of
20 Columbia police department. At least my observations
21 are that each major agency has kind of determined what
22 training is required for its personnel, FBI agents, so
23 forth and so on. And then, too, I would suggest to
24 you that even within the states, we establish minimum
25 mandated training standards required to do the job.

1 That doesn't mean that's everything a person would
2 ever need to know in their entire four years, but what
3 a person needs to know on an entry level basis to
4 perform the job acceptably.

5 COMMISSIONER KANEB: As you may know,
6 the Commission, our Commission is required to provide
7 a menu of standards for how to run an incarceration
8 facility so as to eliminate or at least greatly
9 minimize prison sexual abuse. And submit it to the
10 Attorney General, who is then mandated to adopt what
11 he or she believes to be -- let us say, the most
12 efficacious version of proposed standards. And at
13 that point, they become, in effect, the law or
14 government regulation, Federal regulation for the
15 Federal system. So should we assume that, in fact,
16 such -- such a framework of training and certification
17 requirements needs to be put forward by us to the
18 Attorney General as part of our standards menu?

19 MR. GEORGE GOTSCHALK: Given the issue
20 that you're discussing, I think it's advantageous, at
21 every level of government, to have those
22 recommendations to put into place.

23 COMMISSIONER KANEB: So that means you
24 would be willing to help us do that?

25 MR. GEORGE GOTSCHALK: I would be -- I

1 think, from an IADLEST standpoint, we're willing to --
2 always willing to try to push forward the
3 professionalism of law enforcement. And the
4 discussion was had this morning of whether this is a
5 systemic problem or an aberration. And you'll pardon
6 me, I'm still in an idealistic world where I feel like
7 when you accept the duties of the office and you take
8 the oath, you have a responsibility to act in that
9 manner. And if we don't, then you're hurting
10 everybody that wears the uniform of whatever you do,
11 corrections, law enforcement, dispatch, or whatever.
12 And a citizen of this state has an -- citizens of all
13 states in this country have an expectation of that
14 person wearing the uniform that services are going to
15 be provided regardless of who you are. It doesn't
16 make any difference. So my answer to you is, I would
17 be more than willing to try to help and I think the
18 organization would as well, to try to help in any way
19 we can.

20 COMMISSIONER KANEB: It could be that
21 we will ask for your assistance. As you probably
22 know, what the Federal government establish -- through
23 the Attorney General, establishes for standards in the
24 Federal prison system, which goes all the way down to
25 lock-ups, is the standard by which state systems and

1 local systems are going to be rated in terms of -- of
2 how well they're performing which, in turn, could well
3 affect how much Federal aid they're going to get. So
4 there is this -- this necessity that the Federal
5 system be set up as a shining example of how to do it
6 right. Now, not just what it's going to do in the
7 Federal system, but for what it, by inference, will
8 hopefully do in most of the states.

9 MR. GEORGE GOTSCHALK: I have a little
10 saying that I use that people in Virginia get tired
11 of. You're only as strong as your weakest link. And
12 until you raise people up, you're not going to
13 strengthen the system. And you've got to work -- how
14 you choose to work, you're working from the top down
15 and, quite frankly, I can hear it in Virginia and hear
16 it in the General Assembly now, where are the dollars?
17 Where is the money? The Feds have all kinds of money;
18 they can do these things. Where does the money come
19 so that I can do these things? And each state is
20 addressing it differently. I'm seeing a trend, for
21 example, in Virginia, where we're going away from
22 individual jails by individual sheriff's offices
23 except in the large urban areas. And what you're
24 seeing is a lot of regional jails to service a lot of
25 these small areas where you have better facilities and

1 better personnel whatever.

2 The other thing I would suggest to you,
3 I think you need to address and I think it came across
4 clearly is, the need to address what a lock-up is.
5 And I don't think -- I would not have considered an
6 area where you hold somebody to question or interview
7 them as a lock-up. From my experience, a lock-up was
8 somebody went to the Magistrate, they were booked,
9 they were being held for their first court appearance.
10 That may be it -- in the early '70s, in Virginia, that
11 was a -- had maybe a police department. A lot of
12 places have changed so that's now the regional jail or
13 the sheriff's office where they're held. But that
14 definition of lock-up, what is a lock-up, I think is
15 important.

16 And, again, what I would suggest to you
17 that even in Virginia, the State Board of Corrections
18 establishes standards for local jails and lock-ups. I
19 would not believe that they would consider the
20 definition you're considering as a lock-up. That's
21 not what we consider it. So I think that's important,
22 defining what a lock-up is.

23 COMMISSIONER KANEB: Okay. But that
24 point is taken. We do know that clarity has to be
25 brought to that particular definition.

1 Well, thank you for your willingness to
2 help us.

3 MR. GEORGE GOTSCHALK: I'm glad to.

4 COMMISSIONER AIKEN: Thank you both for
5 appearing.

6 Ms. Layman, I want to -- in your
7 presentation, if I remember correctly, you made
8 reference to making an assessment of the design issues
9 of facilities as well as operational detail, I think
10 your word was.

11 MS. ELIZABETH LAYMAN: Yes, sir.

12 COMMISSIONER AIKEN: What are some of
13 the examples of those?

14 MS. ELIZABETH LAYMAN: I'll give you
15 one particular example. A small facility in the state
16 of Georgia that has three lock-up cells. They do not
17 use those cells more than, I would say, maybe once or
18 twice a month. Now, they have a surveillance camera
19 set up to survey that area. However, the camera is
20 only supposedly turned on when there is going to be
21 somebody placed in that cell. Well, my question is,
22 is how are we sure that that's being done properly.
23 So there is some -- that type of thing, surveillance
24 cameras is part of it. Also, just the design of the
25 cell itself. Whether or not there is a direct line of

1 sight for someone to actually supervise what is going
2 on there, and if there isn't, then is there a
3 surveillance camera. Some of the issues with cameras
4 that did come up, which was pretty important was, and
5 you know, it had to do with the privacy issues as
6 well. Should the toileting facilities be surveyed by
7 camera. I mean, how is that done. Some of these
8 facilities hold people for up to 72 hours, so there
9 are showering and toileting facilities. So that is a
10 real key issue for developing standards for that, is
11 how this is that to be done.

12 Some of the other things, I guess,
13 would be access to emergency call buttons or whatever
14 you may want to call it. If you have more --
15 particularly, if you have -- I guess it really doesn't
16 matter if you have one arrestee in a cell or two or
17 more in a cell, if there no line of sight or if nobody
18 is monitoring what is going on there 24 hours, around
19 the clock, do they have some way to have an emergency
20 call button or an assist button. Or if there is a
21 sexual assault taking place or some sort of assault
22 taking place, is there some panic button that they can
23 use. So that was one of the other issues that came
24 up. That was particularly applicable to court holding
25 facilities where you have multiple people in one

1 holding area, and nobody is really sure who is
2 responsible for that. You have, you know, this county
3 jail bringing somebody into the court holding
4 facility, this other county jail, the state prisons,
5 or whatever, and these people are all mixed together
6 and you have one bailiff there supervising them, who
7 is not there all the time. So that type of physical
8 design, is there a way for these arrestees to make an
9 emergency distress call or whatever. Those types of
10 things.

11 COMMISSIONER AIKEN: And what about the
12 operational assessment? What are some examples of
13 operational--

14 MS. ELIZABETH LAYMAN: Some of the
15 operational assessments? Really, all revolve around
16 policy and procedures and what is their practice, how
17 often do they make checks on these arrestees, how are
18 staff responding when they hear certain things or
19 there may be a suspicion of something going on. Do
20 they report that. To whom do they report it. What
21 happens to that report when it's received. Who
22 investigates it. Who collects the evidence. Who
23 seeks medical treatment for these arrestees, should
24 they need it or should they become victims. And is
25 there an agreement with where they are going to be

1 taken should they need medical or mental health
2 assistance.

3 COMMISSIONER SMITH: A couple of
4 questions. Actually, one, for both of you.

5 Could you talk a little bit more about
6 the connection between standards and the
7 decertification process? Because certainly one of the
8 things that we have heard a lot in our hearings, and
9 it kind of goes into, I think, Mr. Ruecker's point
10 about the labor process, is that often what happens
11 is -- let's talk about staff for a minute. Staff who
12 are involved in these incidents, but what happens is,
13 they resign and they go to another jurisdiction, or go
14 and work in another setting. And I wondered if you
15 could talk a little bit about how strengthening the
16 certification or decertification process might provide
17 us some tools in that area?

18 MR. GEORGE GOTSCHALK: Let me address
19 that, if I will. One thing let me tell you. IADLEST
20 has developed and is working on a national
21 decertification database, and it would allow any
22 criminal justice agency to take a look at, at least
23 that database, to determine if that person had been
24 decertified in another state. It wouldn't tell them
25 exactly what for, but it should be a red flag to say,

1 you need to contact this state to determine what went
2 on before I hire this person.

3 COMMISSIONER SMITH: And that
4 decertification could be for this, or it -- for some
5 other off-duty conduct or whatever?

6 MR. GEORGE GOTSCHALK: Well, every
7 state is going to be different, again, in terms of its
8 ability and the strength of its program.

9 COMMISSIONER SMITH: Right.

10 MR. GEORGE GOTSCHALK: And I'll use the
11 state of Florida for an example. And I'm not an
12 expert. The gentleman who runs that is named Mike
13 Crewes out of Florida. But they have broad authority
14 and, for example, if a police officer is arrested for
15 DUI, they can do everything from give him a verbal
16 warning to actually removing them from office. And
17 they've got a set of guidelines that the POST
18 commission uses to do that. But they can decertify
19 the officer and say -- independently of the agency
20 itself, and say, you cannot serve as a law enforcement
21 officer in the state of Florida. You just can't do
22 that.

23 And it was mentioned today, and I think
24 one of the things I even hear in Virginia is, when a
25 chief tries to fire somebody and, unfortunately, it

1 goes through the personnel department and personnel
2 reinstates them. There is no choice for that chief
3 but to try to do something with that individual to
4 keep them out of harm's way. And I've got one case, I
5 know, in Virginia where a chief has complained to me
6 where the judge has actually said, don't bother
7 sending him to the courtroom because I'll never
8 believe anything they say. So now he's got a sworn
9 law enforcement officer that personnel is making him
10 keep, but he can't use him in any kind of situation
11 where he can make an arrest because the judge refuses
12 to hear anything that's brought before him. And that
13 is a dilemma for him. Where in this particular case,
14 at least in those states that do decertification,
15 there is another body available to them. I will say
16 this, too, because I think it's just as important,
17 because I get calls from Virginia, if a citizen has a
18 complaint against a police department and they can't
19 get any of -- what they feel is assistance from
20 anybody, where do they go. At least in those states
21 that have a strong decertification program, they have
22 an alternative to go to.

23 COMMISSIONER FELLNER: Can I just ask
24 you how many states do have decertification programs?

25 MR. GEORGE GOTSCHALK: I don't have

1 that off the top of my head. It is on the disk.

2 COMMISSIONER FELLNER: It is on the
3 disk?

4 MR. GEORGE GOTSCHALK: Yes, ma'am.

5 COMMISSIONER KANEB: Excuse me. May
6 I -- to get this fellow's name in Florida. Mike what?

7 MR. GEORGE GOTSCHALK: Mike Crewes.

8 COMMISSIONER KANEB: C-r-u --

9 MR. GEORGE GOTSCHALK: C-r-e-w-e-s.

10 MS. ELIZABETH LAYMAN: In Tallahassee.

11 COMMISSIONER SMITH: And are there --
12 sort of in this whole decertification group of
13 questions, are there particular states -- I mean,
14 Florida has been mentioned a couple of times. Are
15 there particular states that seem to be ones that we
16 might look to in terms of looking at that process?

17 MR. GEORGE GOTSCHALK: They --

18 COMMISSIONER SMITH: Not as necessarily
19 models, but as useful states to look at.

20 MR. GEORGE GOTSCHALK: Utah was one of
21 the first states that was very active in this
22 decertification initiatives. And I use Florida
23 because I see their newsletter quite a bit. I
24 think --

25 COMMISSIONER SMITH: Idaho maybe?

1 MS. ELIZABETH LAYMAN: Idaho and
2 California also. I will -- I do have one other to add
3 about -- being from Florida and working in Florida for
4 many years, I do have to say that Florida has
5 something, I believe, is unique to all of the 50
6 states. And I think they are the only state that does
7 this. Law enforcement and corrections officers who
8 are certified, when there is an internal investigation
9 that is complete, that investigation is now public
10 record. Anybody has access. Now, not necessarily to
11 all of the interviews, but to the actual charging
12 document, whatever you want to call it, and then to
13 the findings and conclusions, they are public record.
14 So that is a -- that is actually, I think, unique and
15 it is something that does sort of help that
16 decertification process carry some weight across the
17 country.

18 MR. GEORGE GOTSCHALK: And I would
19 suggest to you and I know we're now dealing with the
20 issue of minority-based policing, that one of the
21 common complaints we heard from the various minority
22 communities was that they submit complaints to the
23 police department and never hear back. And unlike
24 Florida, a lot of the police departments will tell you
25 that it's a personnel issue. We can't -- we are

1 forbidding from reporting back. It's a closed record.

2 COMMISSIONER FELLNER: So how did
3 Florida get around -- I'm just curious the legal
4 framework by which -- because most places, they won't
5 tell you anything other than jail or prison, they have
6 something -- how did Florida --

7 MS. ELIZABETH LAYMAN: The Florida
8 legislature actually passed that as a law.

9 COMMISSIONER FELLNER: Recently? A
10 long time ago?

11 MS. ELIZABETH LAYMAN: Oh, it's been in
12 existence for at least, I would say, eight years,
13 probably. Five to eight years maybe. Brenda probably
14 knows more because, you know, Brenda has done an awful
15 lot of research on the state laws that we have been
16 working with her on. So I would say it's at least
17 five years probably.

18 COMMISSIONER SMITH: And just one other
19 question. I guess, again, for both Mike and Beth.
20 What impact does decertification -- if I'm decertified
21 in Florida, does that have any impact when I go to
22 Idaho or wherever to get a job?

23 MS. ELIZABETH LAYMAN: The only impact
24 that I would be aware of is that there in no
25 preclusion unless, let's say, Iowa or whomever you

1 have applied to now, unless they have something that
2 says they cannot hire you because you have been
3 decertified somewhere else. So it would have to be a
4 reciprocity thing where they recognize a
5 decertification from another state. Maybe
6 Mr. Gotschalk can tell you if that actually exists.

7 MR. GEORGE GOTSCHALK: I think that
8 what you're -- you're absolutely right. It's a state
9 by state issue. In Virginia, if somebody came from
10 Florida and the Chief of Police submitted a training
11 exemption form to me to give them a waiver of
12 training, I check the other states. And if they are
13 decertified in another state, all I tell them is,
14 there is a problem, they were decertified. I'm not
15 going to give them a training waiver. They could
16 be -- I'm not sure what the issue is. You need to
17 check. But I can tell you one thing, they're going to
18 go through the entire training program.

19 COMMISSIONER FELLNER: Do you think
20 there should be something more like -- you know,
21 registries are very much in vogue for certain kinds of
22 offenders. Should there be, not just the national
23 database you said, but including on it why? And
24 should it be mandatory that before anybody is hired,
25 that the agency doing the hiring check the database to

1 see if the person has been decertified or fired, or
2 whatever? Some way to make it -- because we've heard
3 many stories of people gone from one place to another,
4 which seems to me to be a problem in and of itself. I
5 wondered if you have any thoughts about that.

6 MR. GEORGE GOTSCHALK: Well, first of
7 all, not everybody has decertification, so what you
8 would be getting is a snapshot from a small group of
9 states. And then decertification is different from
10 state to state. The requirements are different from
11 state to state. So there is still, I think, the need
12 to check with the state for a locality and you -- I
13 will tell you a little story that happened a few years
14 back. And you talked about checking the database and
15 so forth. I had a small town police department and I
16 asked them to fax me something. And the woman said --
17 told me, she said, honey, I'm lucky if I have a copy
18 machine. You know, not everybody has the resources.
19 This was a one-man department. You know, crazy things
20 like accesses to the Internet, they may have to go to
21 the library to do. I don't know. What you'll find
22 is, everybody's resources are different and
23 everybody's knowledge base is different. And in some
24 of the small towns, if you can get them to meet --
25 they have to meet the state entry level requirements

1 for employment if the state has it. But that's about
2 all they're going to do, because there is a cost
3 associated with it.

4 COMMISSIONER FELLNER: And do the
5 states require -- when you go into an academy, do they
6 do a criminal background check of any sort? Can you
7 be certified if you have a current -- some kind of
8 criminal record?

9 MR. GEORGE GOTSCHALK: Yes. Now, in
10 the state of Virginia, the code says, to be a law
11 enforcement officer, you have to be -- actually, it's
12 18 years of age. You have to be of Constitutional age
13 with the Chief or Sheriff, which is 18 now, because
14 you can vote. You have to have a high school
15 education or a GED. You have to have a valid driver's
16 license. You have to have a physical examination to
17 do the position. And you have to have a background
18 investigation to minimally include a criminal -- a
19 fingerprint-based criminal history reference check.
20 But that's the extent that it goes.

21 COMMISSIONER FELLNER: I actually
22 wanted to ask you, Ms. Layman. In your written
23 testimony, your oral, you referred to, you've
24 developed a risk assessment checklist and you have a
25 physical checklist and you have training. Can you

1 provide the Commission with all of those materials?

2 MS. ELIZABETH LAYMAN: I will certainly
3 be happy to do that.

4 COMMISSIONER FELLNER: That would be
5 great.

6 MS. ELIZABETH LAYMAN: I will tell you
7 that they are in draft form at this point because we
8 are piloting some of those and there will be changes
9 to them. But we are happy to provide you those
10 assessment tools.

11 I just -- I wanted to just add one more
12 thing about this decertification issue. Every state
13 will be different. I know that in the state of
14 Florida, if you have a conviction for a felony, you
15 lose your civil rights, and -- which means, if you
16 go -- if you are hired to be -- if you're applying to
17 be a police officer, you can have your civil rights
18 restored, but the right that is never restored is the
19 right to have a firearm. Therefore, you could not be
20 hired as a police officer because you would not
21 qualify to carry a firearm. But every state will be
22 different on that, and that is just widely varied.

23 COMMISSIONER SMITH: Can I just ask? I
24 would like to ask one last question. I had two
25 questions, one was around this decertification and

1 another one around data collection. Okay? So if
2 lock-ups are just coming into vogue, could you give me
3 some assessment on the status of data collection
4 around the prevalence of these behaviors in lock-ups?

5 MR. GEORGE GOTSCHALK: I don't know
6 that I could at all.

7 MS. ELIZABETH LAYMAN: Only
8 anecdotally, if that will help at all.

9 COMMISSIONER SMITH: Yeah. I'm just
10 asking for your impressions.

11 MS. ELIZABETH LAYMAN: My impression
12 is, of course, that we need to be very specific about
13 definitions, not just what is a lock-up, but what is
14 sexual harassment, what is sexual violence, what is
15 this, what is that. We all know that. Part of the
16 issue is --

17 COMMISSIONER SMITH: But don't the BJS
18 definitions --

19 MS. ELIZABETH LAYMAN: BJS definitions
20 are there --

21 COMMISSIONER SMITH: -- help in that --

22 MS. ELIZABETH LAYMAN: They do help
23 tremendously. And we are -- those are the definitions
24 that we are using in our training, are the BJS
25 definitions. Which, of course, align with the Act

1 itself.

2 But part of the other thing is training
3 staff to be aware of indicators or red flags if we
4 want to call them. And I'll just give you an example
5 of something that was told to me when I was doing an
6 on-site visit. An officer that was supervising a
7 lock-up, there were three people in the lock-up. One
8 of the arrestees said, hey, Joe Smith has grabbed my
9 balls and I want to him to stop doing that. Well, to
10 me, that is an indicator that there is something going
11 on. No matter what it is, it's not right, but the
12 officer supervising the lock-up just says, oh, you
13 people just need to, you know, get a grip and just
14 leave each other alone. And I don't really care what
15 you do to each other.

16 And this sometimes tends to be the
17 attitude. I don't know that it's malicious. I think
18 it's just sort of maybe a form of ignorance and that
19 it's trying to get the message across that these
20 things are indicators of something else that could be
21 potentially wrong. A culture issue, if I may say.

22 MR. GEORGE GOTSCHALK: I was thinking
23 to my years back at the Richmond Sheriff's Office. I
24 actually left because I went home and told my wife one
25 night, I'm starting to think this is a normal

1 environment and it's not. I've got to get out. And
2 in all honesty, it is probably to me the worst
3 situation you could ever work in. It's one of the
4 hardest jobs and people don't realize it, because you
5 work in a strange environment every day, and you are
6 just as confined as the individuals who are there.
7 And the behaviors are different. Regardless of what
8 you say, the behaviors are different, and you can
9 start having your world skewed if you're not careful.
10 You have to keep perspective, and that's not easy to
11 do for everybody.

12 COMMISSIONER SMITH: So in response to
13 my question about the status of data collection in
14 lock-up facilities.

15 MS. ELIZABETH LAYMAN: I think it's --
16 I think it's possible, of course, as long as there are
17 clear definitions of what needs to be reported and all
18 staff -- and I'm talking about all staff, too, I'm
19 talking about line staff as well as secretaries and
20 blah, blah, blah -- you know what I'm saying. They
21 all need to know what they're supposed to be looking
22 for if we want that data collected.

23 COMMISSIONER FELLNER: Do you have any
24 thoughts, either of you -- I think you were both here
25 when Ms. Ritchie testified earlier and talked about

1 what her research has been showing in terms of
2 misconduct in lock-up. Do you have any sort of -- as
3 you listened to her, did you have any thoughts or
4 suggestions that you would like to sort of share with
5 us based on what you were hearing from her?

6 MS. ELIZABETH LAYMAN: Ms. Ritchie was
7 Amnesty --

8 COMMISSIONER FELLNER: Well, she spoke
9 about -- she was talking about the -- yeah. Giving
10 examples of the abuse of women and transgender --

11 MS. ELIZABETH LAYMAN: Yes. Yes. In
12 the eight years that I've been working through various
13 cooperative agreements on staff sexual misconduct, I
14 have to say that it is -- in my opinion, from what I
15 have found, it is probably more rogue than systemic,
16 to use her words or to use your words. However, I do
17 think that it -- those incidents that are occurring
18 probably are not getting reported. I think reporting
19 is just absolutely minimal compared to what is
20 actually going on. So to make that kind of assessment
21 now without really knowing -- you know without really
22 having full reports is very difficult. But I do think
23 that, in general, most correctional and law
24 enforcement people are of high ethical morals, and I
25 think there are rogues that this will happen.

1 However, you know -- I hesitate to kind
2 of say it at this point, but I think it's also a
3 systemic cultural issue where these things happen.
4 Let me say that if you have, for example, the incident
5 that I just told you about where these three people in
6 the lock-up facilities were, you know, doing whatever
7 they were to each other and the officer is not really
8 paying attention or thinking that it was significant,
9 to me, is a cultural issue systemic within the
10 culture. What is accepted in that organization and
11 what is not accepted in that organization. So I would
12 rather kind of keep it at that, that I think it's
13 basically a systemic cultural issue that causes these
14 things.

15 COMMISSIONER FELLNER: Can I just
16 follow up on that. We've heard often throughout the
17 hearings about the role of leadership, and today, you
18 can have all the best policies, the best standards,
19 you know, and if they're not enforced, if the person
20 in charge does a wing and a nod, it all falls apart.
21 We can't, in essence, legislate leadership. We can
22 encourage, but short of being able to legislate
23 leadership, what could we as a Commission do to try
24 and support and strengthen so that leaders do provide
25 leadership in this area? If you understand my -- the

1 dilemma we're going to have about that.

2 MR. GEORGE GOTSCHALK: Let me add a
3 piece to that, I guess. What I would suggest to you.
4 You heard from IACP this morning. There is an
5 offshoot of IACP called SACOP, which is --

6 COMMISSIONER FELLNER: Safe --

7 MR. GEORGE GOTSCHALK: SACOP. Which is
8 the various state associations that are affiliated
9 with IACP. For example, the Virginia Association of
10 Chiefs of Police has a SACOP to IACP. They are very
11 instrumental in providing information to their
12 membership throughout the state. And for a lot of
13 chiefs in small and medium-sized towns who cannot go
14 to the national IACP conference, they can maybe go to
15 the state conference. Tomorrow when I get back to
16 Virginia, I'm going to be providing training to new
17 chiefs at Natural Bridge. I do that twice a year.
18 The SACOP would be a group that be excellent to
19 disseminate information to within their states, as
20 would the various state association directors for the
21 Sheriffs' Association.

22 COMMISSIONER FELLNER: Thank you.

23 COMMISSIONER SMITH: One other thing
24 that I also wanted to raise again, since you are from
25 Virginia, and you're from Florida. One of the things

1 I know is that in terms of dealing with that cultural
2 issue, because I think that you're right, that it may
3 be one -- there might be the critical incident, but
4 around all of those critical incidents there are
5 people who know about what happened.

6 MS. ELIZABETH LAYMAN: Yes.

7 COMMISSIONER SMITH: Who witnessed it.
8 There also may be people who have information but
9 don't provide that information. And, certainly, there
10 are a couple of states who actually have created
11 separate laws around failure to report in this area,
12 and I believe that Florida is one of them. Right?

13 MS. ELIZABETH LAYMAN: Yes. Correct.

14 COMMISSIONER SMITH: Where there is a
15 separate criminal penalty for failure to report abuse,
16 not just sexual abuse, I believe, but sexual abuse of
17 a person in custody. Right?

18 MS. ELIZABETH LAYMAN: Absolutely. A
19 separate law. Let me just also -- just comment on
20 that. Florida tends -- seems to have an extremely
21 comprehensive law on the issue of staff sexual
22 misconduct, and seems to have a very good process for
23 criminal justice standards and training and what they
24 do. However, that does not mean that what is going on
25 in Florida corrections is perfect. Let me just say

1 that.

2 COMMISSIONER SMITH: We know that.

3 MS. ELIZABETH LAYMAN: Again, the
4 leadership issue.

5 COMMISSIONER SMITH: We know that.

6 CHAIRMAN WALTON: Anybody else?

7 Okay. Thank you. What you've said
8 will be very helpful to us, I'm sure.

9 COMMISSIONER FELLNER: And do send us,
10 even if they're draft or even -- you can, again, send
11 them to the staff -- I just wanted to ask, you have
12 done -- there are some other written -- your training
13 materials. We're just trying to gather as much stuff
14 as possible to then guide us as we're drafting.

15 MS. ELIZABETH LAYMAN: Yes.

16 CHAIRMAN WALTON: Do we have our next
17 panel here? Mr. Rivera? Do we have our next panel
18 here?

19 We'll start back -- we'll start a
20 little early so we can finish a little early. We'll
21 start back at 3:00 o'clock rather than 3:15.

22 (RECESS.)

23 CHAIRMAN WALTON: Okay. We will
24 proceed with the final panel today, which is on
25 Native American Facilities, issued related to

1 sovereignty and the overall situation, and what, if
2 anything, we should be thinking about as it relates to
3 the facilities involving Native Americans. We're
4 happy to have three -- no. Two? Only two. Okay.
5 Two participants here today to testify. If the two of
6 you would please stand and take the oath.

7 (Witnesses sworn in.)

8 CHAIRMAN WALTON: Thank you. Identify
9 yourselves and tell us who you are and then we'll
10 proceed with Mr. Rivera's testimony first, and then
11 Mr. Gover.

12 MR. GUILLERMO RIVERA: Good afternoon.
13 My name is Guillermo Rivera. I'm the Associate
14 Director of Corrections for the Bureau of Indian
15 Affairs.

16 CHAIRMAN WALTON: Thank you.

17 MR. KEVIN GOVER: And my name is Kevin
18 Gover. I'm a law professor at Arizona State
19 University and a former Assistant Secretary for Indian
20 Affairs.

21 CHAIRMAN WALTON: Thank you very much
22 for your presence.

23 Mr. Gover.

24 MR. GUILLERMO RIVERA: First of all,
25 thank you --