

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

1 particularly in Texas, mere administrative awareness
2 of the problem has been shown to be inadequate.

3 TDCJ officials have known about this
4 problem for a long time, and for quite a number of
5 years they've had policies and procedures that are
6 pretty good, better than in many other places of the
7 country, but that knowledge has not been enough to
8 change the prison culture. And it is going to take
9 the kind of public revelations and public shame and
10 public outcry that are provided by this Commission
11 that is going to really finally bring about true
12 change.

13 I think it's really worth remembering
14 that it was as long ago as 1999, that the Honorable
15 William -- Wayne William Justice, entered a decision
16 in Ruiz versus Johnson, which was a class action by
17 TDCJ prisoners. The Ruiz court found that Texas
18 prisoners, quote, live in fear. A fear that is
19 incomprehensible to most of the state's free world
20 citizens. More vulnerable inmates are raped, beaten,
21 owned and sold by more powerful ones. Despite their
22 pleas to prison officials, they are often refused
23 protection. Instead, they pay for protection in
24 money, services or sex.

25 Two years later, more than two and a

1 half years, later essentially nothing had changed.
2 The district court entered additional findings,
3 saying -- finding that the institutional resistance to
4 resolving serious safety problems pervades the system
5 and that prison officials deliberately resist
6 providing reasonable safety to inmates. The result is
7 that individual prisoners who seek protection from
8 their attackers are either not believed, disregarded,
9 or told that there is a lack of evidence to support
10 action by the prison system.

11 One might have hoped that these
12 stunning findings, not once but, essentially, three
13 times, over a period of as many years by a Federal
14 court would have produced an upheaval and far reaching
15 reform within the system. But, unfortunately, that
16 wasn't the case. Although TDCJ did institute the Safe
17 Prisons Program, the culture of tolerating prison rape
18 continued virtually unchanged.

19 The court later entered an order
20 requiring TDCJ to keep all kinds of statistics and to
21 take reasonable steps to ensure that prisoners were
22 housed safely. And the court specifically said that
23 these requirements did not mandate any change from
24 TDCJ's existing policies. It said that its detailed
25 orders required the defendants to do more than act in

1 accord with their own written policies and procedures.
2 Yet, prison officials continued -- and some may
3 continue to this day for all I know -- to play a game
4 of willing disbelief, to continue to insist that rape
5 is not a major problem and that it occurs only as
6 sporadic, isolated, unforeseeable aberrations from the
7 norm. While, in fact, as too many TDCJ prisoners
8 know, predatory gangs are continuing to routinely
9 force sex on those who are not powerful enough to
10 resist.

11 The ACLU continued to receive desperate
12 pleas for help from vulnerable prisoners, especially
13 those were young, nonviolent, effeminate, or mentally
14 ill. And these prisoners gave us consistent credible
15 accounts of being enslaved by prison gangs and forced
16 into prostitution. And we had documents showing that
17 prison officials repeatedly ignored their pleas for
18 protection, either on the grounds that the prisoners
19 couldn't present conclusive evidence of victimization,
20 or on the ground that in seeking protection the
21 prisoner was probably merely trying to manipulate the
22 system.

23 We found that there was -- were a
24 number of reasons for this strong disconnect between
25 TDCJ's written policy and the actual practice. For

1 example, after Ruiz, TDCJ commissioned excellent
2 training materials for the Safe Prisons Program on
3 preventing and responding to prison rape. But these
4 materials contradicted deeply-ingrained attitudes and
5 practices at the prison, and there seems to have been
6 no pressure from the top down to insist that prison
7 staff actually learn and absorb this material. We
8 deposed prison officials from lowest line staff to the
9 highest level, you know, to wardens, and found that
10 although they knew that they'd -- yeah, they'd seen a
11 video, they'd read some materials, they could not
12 remember anything about it. And when cited basic
13 propositions, some of which are -- that Lisa Graybill
14 just read to you in an earlier version, they would
15 contradict them. They would say, well, absolutely
16 not. You know, that's not the way we run things here.
17 They were totally unfamiliar.

18 The old ways that are so stubbornly
19 resistant to modification are based on deeply-held
20 prejudices and myths about prison rape, which are
21 found in prisons around the country, but which seem to
22 have a particularly strong foothold in Texas prisons.
23 For example, prison officials very often view and
24 misreport incidents of coerced sex as consensual sex.
25 And this is partly because there is the ever-present

1 threat of violence and gang rape if prisoners do not
2 oblige with demands for sex. And it's also because
3 prisoners often have to enter into a protective
4 partnership in order to get -- from being forced into
5 prostitution, generalized prostitution.

6 After Ruiz, TDCJ's Safe Prison
7 Programs, their materials, their policies and
8 procedures, also paid lip service to the proposition
9 that gay men are at heightened risk for sexual
10 victimization. But in practice, TDCJ classification
11 officers and prison officials and line staff continued
12 to act on the deeply embedded view that gay or
13 effeminate prisoners are asking for it.

14 Lisa Graybill has -- and others have
15 alluded, I think, to the Prison Litigation Reform Act,
16 and that has really been a major obstacle to
17 confronting this problem, because it has forever
18 barred countless prison rape victims from bringing
19 civil suit against prison officials. Under the PRLA,
20 prisoners can be raped and sexually assaulted and not
21 have access to the range of remedies available to most
22 civil rights plaintiffs for reasons that have been
23 alluded to in earlier panels.

24 The grievance system is particularly an
25 immense stumbling block. We came upon countless

1 cases, out of Texas and around the country, clearly
2 meritorious cases, horrific cases, where the plaintiff
3 was barred from seeking damages and where injunctive
4 relief had become moot because of a transfer, and
5 these cases never see the light of day. And it has a
6 great deal to do with the grievance system.

7 There was a question, I believe, from
8 Commissioner Fellner, from an earlier panel, about how
9 the grievance system works in TDCJ, and I am quite
10 familiar with it. And how it works is, a prisoner can
11 complain until they're blue in the face, from the
12 lowest line staff up to the warden, and that does not
13 constitute exhausting administrative remedies. By the
14 time they have any idea that they even should bring a
15 lawsuit, can bring a lawsuit, or that that would be a
16 form of relief, the time for filing a grievance has
17 long passed. It's two weeks. And so it's --
18 it's tragic, the cases that we saw.

19 The victims that were barred included
20 Garrett Cunningham, who I believe has been a witness
21 before this Commission. Garrett was raped by a prison
22 guard who had many young victims. At last -- and
23 Garrett's claim was mooted out through that exhaustion
24 process. At last, a later victim of this same guard,
25 a young man named Nathan, contacted the ACLU in time

1 for us to assist him in threading the needle of filing
2 an administrative complaint. Nathan also managed to
3 capture a sample of the guard's semen and sent it to
4 the FBI for DNA testing, and was then able to bring to
5 a successful conclusion a civil suit.

6 But few prisoners have those resources.
7 In 2005, the ACLU obtained, in litigation, thousands
8 of pages of TDCJ investigative reports, documenting
9 TDCJ officials' handling of prison rape complaints,
10 over an 18-month period, at a single prison, the
11 James V. Allred Unit. I would like to add to what has
12 been previously said in this panel about the
13 difficulty of statistic keeping problems. There is a
14 very -- there is a Draconian destruction of documents
15 policy in TDCJ. These reports of prison rapes,
16 complaints of prison rapes get destroyed very, very
17 quickly. But in examining the thousands that we did
18 manage to get over an 18 -- that covered an 18-month
19 period for one prison, what we found is that in case
20 after case, vulnerable prisoners who had been
21 threatened, beaten, coerced, or sexually abused were
22 denied protection on the ground that they could not
23 prove that they had been victimized. And no matter
24 what level of proof they were able to marshal, and I
25 won't go into the details now, there was always a --

1 there was always an excuse for avoiding it, to say
2 that the evidence presented was insufficient.

3 Short of a notarized document from
4 the -- from the assailant, and perhaps not even then,
5 nothing would have been sufficient. It was for lack
6 of credible evidence or suspicion of an attempt to
7 manipulate the system that TDCJ -- that was the
8 grounds in which TDCJ officials denied protection to
9 Roderick Johnson, whose lawsuit against the TDCJ went
10 to trial in the fall of 2005. And as in so many
11 cases, TDCJ officials claimed that Johnson had asked
12 for safekeeping in order to be housed with a
13 homosexual lover. What they ignored was that
14 Mr. Johnson had repeatedly begged not only for
15 safekeeping but for protective custody, which
16 Ms. Graybill has already pointed out is a very
17 unpleasant way to be housed. He said repeatedly,
18 lock me up and throw away the key. Just get me away
19 from these gangs.

20 The energy that TDCJ poured into trying
21 to discredit Roderick Johnson's claims of being
22 sexually abused were overwhelmingly greater than the
23 effort they made in protecting him. They made zero
24 effort to protect him. They sank an unbelievable
25 amount of resources into trying to discredit him.

1 There is a profoundly ingrained culture
2 in TDCJ that prisoners who claim rape are trying to
3 manipulate the system, and it's going to take a
4 profound and sustained effort to change that attitude.
5 And I believe that the work of this Commission is
6 going to be a major step in finally changing that
7 attitude.

8 CHAIRMAN WALTON: Thank you very much.
9 Thank you all for your testimony.

10 Mr. Austin, a couple of statistics I
11 wanted to query you about. Because sometimes when
12 statistics are cited, if there is no explanation given
13 for those statistics, they can leave an impression
14 that may be false.

15 You said that the greatest number of
16 perpetrators were black men and the greatest number of
17 victims were white men. And that would maybe suggest
18 to some that black men have a greater predatory
19 propensity for engaging in violent sexual behavior.

20 Let me just ask. What is the racial
21 makeup of the -- as far as males are concerned that
22 you looked at, of the prison facilities at issue? I
23 mean, is there a disparity in the number of black
24 males as compared to white males in the facilities?

25 DOCTOR JAMES AUSTIN: Yes.