

1 CHAIRMAN KANEB:

2 Good morning, ladies and
3 gentlemen. I am John Kaneb, vice-chair
4 of the National Rape Elimination
5 Commission, and I will be presiding at
6 today's hearing. First, as they say,
7 when you -- they close the door on a
8 commercial aircraft, please turn off
9 all cell phones, pagers, PDA's and
10 other such wireless devices. Thank
11 you.

12 Before we proceed, less I
13 forget, I'm going to ask each of my
14 fellow commissioners who are here to
15 introduce him or herself very briefly.
16 It won't last than three or four
17 minutes each. That's my small attempt
18 of humor. And we'll go on with our
19 special guest, Sheriff Gusman.

20 COMMISSIONER SMITH:

21 Good morning. My name is
22 Brenda Smith. I'm a professor at
23 American University Washington College
24 of Law.

25 COMMISSIONER PURYEAR:

1 Good morning. I'm Gus
2 Puryear, general counsel for
3 Corrections Corporation of America.

4 COMMISSIONER NOLAN:

5 Good morning. I'm Pat
6 Nolan, vice president of Prison
7 Fellowship.

8 COMMISSIONER FELLNER:

9 I'm Jamie Fellner. I'm a
10 senior counsel of Human Rights Watch.

11 COMMISSIONER AIKEN:

12 Good morning. My name is
13 James Aiken. I'm president of James
14 Aiken & Associates, Inc.

15 CHAIRMAN KANEB:

16 And as I said, I'm John
17 Kaneb. I'm in private business based
18 in Boston. To my left is Margaret
19 Chiara, general counsel to the
20 Commission.

21 We have with us a special
22 guest, and we are honored by his
23 presence.

24 Sheriff Marlin Gusman.

25 Welcome. We greeted you in the

1 backroom and we look forward to hearing
2 from you.

3 MR. GUSMAN:

4 Thank you. Good morning,
5 Commissioner Kaneb and fellow
6 Commissioners. As criminal sheriff for
7 Orleans Parish, I want to welcome you
8 to this hearing of the National Prison
9 Rape Elimination Commission and also
10 welcome you to New Orleans.

11 We upon the efforts of this
12 Commission, Prison Rape Elimination Act
13 of 2003 is an important step in the
14 elimination of sexual violence in the
15 correctional environment. We applaud
16 the Commission's efforts to collect
17 evidence and aid in the identification
18 of common characteristics of both
19 victims and perpetrators of prison
20 sexual violence, and identifying the
21 characteristics of prison systems that
22 appear to have been successful in
23 deterring prison rape.

24 This Commission's activities
25 and reports and the National Prison

1 Rape Elimination Act have help the
2 Orleans Parish Prison improve its
3 awareness, reporting, oversight,
4 accountability, care and prevention of
5 prison rape. Our administration of the
6 reporting mechanism has improved as the
7 data submitted has become more precise.
8 Oversight and accountability for
9 tracking these events have also
10 improved. And we've ensured that we
11 address the appropriate care for
12 victims and the sanctions for
13 perpetrators.

14 Yesterday morning the
15 hearing focused on the medical care
16 provided to victims of sexual violence.
17 Our staff at Orleans Parish Prison has
18 been trained to implement a protocol
19 that ensures that each potential victim
20 receives appropriate care. As all
21 allegations of sexual violence are
22 taken very seriously, potential victims
23 are taken to the local hospital to
24 initiate a standardized investigation
25 and treatment protocol. The hospitals,

1 sexual assault nurse examiner, staff is
2 involved in all rape cases. The
3 inmates receives a medical exam,
4 forensic evidence is gathered --
5 gathered with the appropriate rape kit,
6 HIV and sexually transmitted disease
7 testing is performed when indicated
8 treatment is initiated.

9 This treatment continues at
10 the jail. Mental health counseling is
11 done for all victims at the jail as
12 well. Inmate victims of sexual
13 violence are also transferred to
14 another safe housing location. They
15 are either placed in protective custody
16 or transferred to another facility,
17 depending upon the circumstance.

18 The Commission's efforts have prompted
19 us to reevaluate our current mechanisms
20 so that we can fine tune.

21 Now, Orleans Parish Prison
22 we take, as I said before, all
23 allegations of sexual assault
24 seriously. Each case is investigated
25 thoroughly and disciplinary action

1 pursued. Legal prosecution is pursued
2 aggressively. Depending upon the
3 circumstances of a case, various
4 internal disciplinary measures are also
5 taken. At the very least, cell
6 confinement or loss of privileges is
7 imposed.

8 The perpetrator custody
9 status is also modified placing him or
10 her in disciplinary or segregated
11 housing into a higher custody status or
12 possible transfer to another facility.
13 Cases involving employees are pursued
14 as vigorously as those perpetrated by
15 other inmates. Maximum, legal, and
16 administrative actions are pursued.
17 Again, the Commission's efforts and
18 publications have allowed Orleans
19 Parish Prison to ensure that the
20 appropriate sanctions are being
21 pursued.

22 As this morning's discussion
23 turn to oversight, we welcome the
24 continued input from the Commission.
25 Orleans Parish Prison has been

1 participating in yearly surveys, and we
2 continue to learn. Participation
3 allows us to become more familiar with
4 the reporting mechanisms, sexual
5 violence definition, and work on
6 accountability for the tracking of
7 investigation treatment and prevention.

8 As seen in the Bureau of
9 Justice Statistics three reports, as
10 participation continues, the data of
11 quality improves. We also look forward
12 to the analysis of self-reporting
13 measures as prison rape, we believe, is
14 surely under-documented.

15 It is important to fully
16 measure sexual violence and to capture
17 data on victims who are reluctant to
18 report incidents for a number of
19 reasons. Ultimately, we look forward
20 to utilizing the data in the reports,
21 the recommendations of this, and other
22 oversight agencies to improve our jail
23 system and prevent sexual violence.

24 And again, welcome to
25 today's public hearing of the National

1 Prison Rape Elimination Commission.
2 Again, we applaud your efforts. And
3 today's discussions will surely help
4 our prison and all prisons and jails in
5 the country comply with the PREA
6 implementation and improve the
7 treatment provided to victims of sexual
8 violence.

9 Welcome to New Orleans. I
10 hope you enjoy your visit. Thank you.

11 CHAIRMAN KANEB:

12 Thank you, Sheriff. Our
13 visit is regrettably brief, but any
14 visit to New Orleans is fun, even when
15 you're conducting a very serious
16 process during the daytime. So thank
17 you again.

18 You -- you refer to your
19 facility as a prison, and I'm -- I'm
20 ignorant on this matter. Is it in fact
21 a relatively short-term holding
22 facility, or is it a prison in the
23 penitentiary sense of the word for a
24 longer term sentence?

25 MR. GUSMAN:

1 That's a very good question.
2 And the -- the name given to the
3 primary facility is OPP, Orleans Parish
4 Prison. As a matter of fact, and we're
5 going back about two and-a-half years
6 ago, before Katrina hit we were really
7 a combination of jail and prison. So
8 we did hold some -- some sentenced
9 inmates, but not for any longer than
10 three or four, five years. Primarily
11 now, we are a jail holding
12 pre-sentenced inmates and municipal
13 offenders. So that's where we're at
14 right now.

15 Now our population is about
16 2500. Before the storm we had a
17 population of about 6,000.

18 CHAIRMAN KANEB:

19 I -- I sort of guessed that
20 might be somewhat the situation. And
21 the reason I ask the question will
22 become apparent in a moment.

23 You talk about taking the
24 allegations very seriously, and I'm
25 sure you and your staff do. And then

1 you tell us that you take action that
2 might involve, presumably, isolating an
3 alleged perpetrator or having him
4 transfer to another facility. But --
5 and I'm asking these questions of you
6 as -- as, in fact, the CEO of a large
7 jail, because jails have, in my view,
8 some of the most serious, if not the
9 most serious problems, in the world of
10 American incarceration in trying to
11 prevent sexual abuse.

12 'Cause of the transitory
13 nature of your population, you're
14 limited to real estate and all kinds of
15 things. So I have trouble
16 understanding how you or any -- anyone
17 operating a reasonably large jail
18 facility can -- can, in fact, try to
19 isolate a potential perpetrator and
20 then maybe somehow protect an alleged
21 victim, and do all of this presumably
22 before any of this is adjudicated
23 unless the alleged perpetrator
24 confesses, which I think is rare.

25 So just as a matter of -- of

1 your facility being maybe a larger
2 example of what exist across the
3 country. How do you -- how do you cope
4 in real world life -- real-time with --
5 with these problems?

6 MR. GUSMAN:

7 Mr. Vice-Chair, first I
8 should have introduced Dr. Gore. He's
9 our medical director at OPP.
10 Responding, I think -- I can't speak
11 for other institutions, but I think our
12 institution has some characteristics
13 that may make it a little bit
14 different. We really operate six
15 separate facilities. Before the storm,
16 we had --

17 CHAIRMAN KANEB:

18 Okay. I understand. I'm
19 sorry. Okay.

20 MR. GUSMAN:

21 We had 11 separate
22 facilities. We each have a warden in
23 each facility. And it gives us the
24 ability to transfer someone to
25 another -- to another facility in the

1 event that something like this happens,
2 and also to provide isolation within
3 the facility for a suspected victim.

4 CHAIRMAN KANEB:

5 Well, you -- you're in a lot
6 better shape than I thought. In better
7 shape than most. Thank you.

8 MR. GUSMAN:

9 Dr. Gore is also telling me
10 that any suspected victim is put on
11 a -- put on our tenth floor, which is
12 really a psychiatric and acute care
13 floor. So that's a further isolation.

14 CHAIRMAN KANEB:

15 Thank you.

16 Questions from
17 Commissioners?

18 COMMISSIONER SMITH:

19 Yes. Sheriff Gusman, good
20 morning.

21 MR. GUSMAN:

22 Good morning.

23 COMMISSIONER SMITH:

24 You talk some about the data
25 collection efforts and how that sort of

1 driven your practice. Can you talk a
2 little bit about what you reported in
3 terms of data, you know, sort of how
4 you saw what kinds of allegations you
5 had when you started reporting and
6 where you are now?

7 MR. GUSMAN:

8 Well, I think that's
9 probably the -- the biggest issue is
10 what, and I'm going to use this term a
11 laymen -- what the laymen thinks of
12 rape is really not the complete
13 definition, so. You know, we've been
14 better educated through the
15 publications, through the work of the
16 Commission so that instances where, for
17 example, there's groping or fondling
18 are also considered within the -- the
19 scope of the National Prison Rape
20 Elimination Act. So that's one
21 example, Commissioner.

22 That's why I think as more
23 people become familiar with it, perhaps
24 the data will improve and -- and, you
25 know, we'll be able to -- to make some

1 good comparisons.

2 COMMISSIONER SMITH:

3 So do you know -- can you
4 tell the Commission what your numbers
5 were? Do you have any sense of what
6 those numbers were from when data
7 collection began until the recent? I
8 believe there's been 2005 data and 2006
9 data.

10 MR. GUSMAN:

11 I really hesitate to -- you
12 know, the Prison Rape Elimination Act
13 came about in 2003.

14 COMMISSIONER SMITH:

15 Right.

16 MR. GUSMAN:

17 I was elected in 2004. And
18 I don't believe that there was any real
19 reliable data prior to that. Since
20 I've been there we have documented --
21 for example, in 2005 there were seven
22 reports. None were substantiated. In
23 2006, and, again, this is a very broad
24 view of the definition, four with three
25 having substantiation.

1 COMMISSIONER SMITH:

2 And is that inmate on
3 inmate, staff on inmate, or just
4 overall?

5 MR. GUSMAN:

6 This is all inmate on
7 inmate.

8 COMMISSIONER SMITH:

9 Okay. And staff on inmate?

10 MR. GUSMAN:

11 I don't think we -- see,
12 that's a part of the area where
13 we're -- we're still trying to get
14 better at, so I don't have any data on
15 that.

16 COMMISSIONER SMITH:

17 And the reasons that you
18 don't have any data is that -- 'cause
19 you don't think that those instances
20 occurred, or is it because you don't
21 have the records from them?

22 MR. GUSMAN:

23 Well, again, I think we're
24 talking about -- there were no -- there
25 were no incident, that I'm aware of,

1 that occurred. None that I'm aware of
2 that occurred.

3 COMMISSIONER SMITH:

4 So nothing that fit any of
5 the definitions, no sexual harassment,
6 no touching of inmates inappropriately
7 by staff, no inappropriate viewing,
8 nothing?

9 MR. GUSMAN:

10 That's why I hesitated
11 because I know that the -- the -- the
12 very definition is something that, you
13 know, we have to get better at
14 reporting, so. I'm telling you that
15 I'm not aware of any, but.

16 COMMISSIONER SMITH:

17 It sounds like you don't
18 have confidence in those numbers.

19 MR. GUSMAN:

20 Well, it's -- I'd say in my
21 remarks we're getting better and better
22 at reporting. And we want to get --
23 continue to get better at reporting.
24 And to say that I don't have
25 confidence, you know. When you read

1 the definition, as you just pointed out
2 some of the more -- more comprehensive
3 view of the definition, it's pretty --
4 pretty broad. Don't you agree?

5 COMMISSIONER SMITH:

6 I agree. But I also
7 understand that the data collection
8 effort has been going on for -- at
9 least three years?

10 COMMISSIONER FELLNER:

11 At least.

12 COMMISSIONER SMITH:

13 At least three years. So
14 I'm surprised that the 2006 data, you
15 know, wouldn't have at least some of
16 those elements there.

17 And I ask you not to put you
18 on the spot. But I do believe that
19 it's important when officials come
20 before us that we ask about, you know,
21 how they report it, what they report,
22 because I think that it gives us an eye
23 into this -- into this inquiry. And so
24 I'd have to say as a commissioner I'm
25 concerned that the 2006 data doesn't

1 include those kinds of data sets.

2 MR. GUSMAN:

3 Well, I didn't say it didn't
4 include. You asked me a bunch of
5 different questions. And one of the
6 things you asked me was how much
7 confidence I had. And I ask my people
8 all the time. In fact, I use it a
9 little bit differently. And lots of
10 time I tell them -- when they're giving
11 me information, I'll tell them, are you
12 willing to put your head on a chopping
13 block on this? You know, that's
14 probably the way I'm responding to you
15 more in that regard. No, I'm not
16 willing to put my head on a chopping
17 block --

18 COMMISSIONER SMITH:

19 For those numbers?

20 MR. GUSMAN:

21 -- for those numbers.
22 However, we do have confidence in -- in
23 the general reporting mechanism. And
24 it's not by way of any excuse, but just
25 the reality.

1 We're coming back from a
2 pretty difficult disaster and, you
3 know, our current population is 2500
4 thereabouts, about 2400 today. A year
5 ago it was a lot smaller, and the year
6 before that we were about -- we were
7 probably less than 400 or 500. So
8 again -- and that throws the numbers
9 off too, so.

10 COMMISSIONER SMITH:

11 But then I think that -- I'm
12 glad you mentioned that because I think
13 it's important to say that. Because
14 it's important to say that our data
15 collection efforts have suffered
16 because of Katrina as oppose to --

17 MR. GUSMAN:

18 We've had tremendous staff
19 turnover. We -- we've had both in the
20 reporting, investigating and all of
21 that, so it's been -- we're still
22 recovering. We're still recovering.
23 We're still trying to get better.
24 We're going to keep improving.

25 COMMISSIONER FELLNER:

1 May I ask a question?
2 Sheriff, what one of the
3 problems with reporting in addition to
4 the ones that you specifically had
5 suffered because of Katrina and the
6 aftermath is that inmates fear
7 retaliation or fear stigma as a reason
8 for not coming forward. And I wonder
9 if you could describe what steps you've
10 been able to take thus far to ensure
11 that or to encourage, the very least,
12 inmates to come forward. And do you
13 have things like confidential hotline?
14 Do you have -- do inmates have access
15 to counselors outside the facility if
16 they have been -- are victims? Can you
17 sort of describe the ways that you seek
18 to both encourage inmates to come
19 forward and to provide services to them
20 which will in turn, perhaps, give them
21 the wherewithal to come forward with
22 allegations?

23 MR. GUSMAN:

24 Well, first we have a
25 confidential grievance procedure that

1 allows someone to confidentially send
2 information on to the warden in that
3 facility.

4 Secondly, the nurses that
5 works with Dr. Gore are daily on the
6 tiers not just passing medications, but
7 also inquiring of the health and
8 well-being of each of the inmates. And
9 they are always looking for instances
10 where further medical attention is
11 needed, whether it's -- it's a cut or
12 -- you know, we have full-time
13 psychiatrist on staff as well as -- we
14 have two part-time psychiatrist.

15 So there are avenues
16 available for them to seek help from
17 security confidentially as well as
18 medical confidentially. We think it's
19 worked pretty good.

20 COMMISSIONER FELLNER:

21 Thank you.

22 CHAIRMAN KANEB:

23 Other questions?

24 Yes, Commissioner Nolan.

25 COMMISSIONER NOLAN:

1 Sheriff, you know all of our
2 hearts were broke with what you and the
3 people of New Orleans went through.
4 And of course, we're with you and are
5 with you. It's a tragedy. And your
6 dedication of the service in the face
7 of that is commendable.

8 I have a question about, I
9 think you said, the tenth floor where
10 the medical facilities are. And I just
11 don't know what your thoughts are. One
12 of the complaints I hear from victims
13 of sexual aggression is that they're
14 often put in protective custody, which
15 saves them from further victimization
16 but cuts them off from family visits,
17 commissary. And so I wonder what the
18 circumstances were with that medical
19 floor be -- you know, are they limited
20 in their privileges because of their
21 placement there?

22 MR. GUSMAN:

23 No. We don't limit the
24 visitation. Commissary is still
25 available and -- you know, I say the

1 tenth floor as a -- one of our medical
2 areas. We also have, you know, a
3 medical area on the second floor of the
4 same building of that facility. So
5 it's -- it's just a place where we can
6 give greater isolation and more -- more
7 continued care on the tenth floor. We
8 have medical personnel left there 24
9 hours a day, seven days a week. And so
10 that's a -- that's another part of it,
11 but it's not a -- it's not in a sense
12 that it's isolation.

13 COMMISSIONER NOLAN:

14 Okay. Thank you.

15 COMMISSIONER SMITH:

16 I just have one other
17 question.

18 One of the things that you
19 mentioned was because of Katrina your
20 population had really -- has really
21 changed. Can you talk a little bit,
22 you know, just in terms of decrease; is
23 that correct?

24 MR. GUSMAN:

25 Oh, yes.

1 COMMISSIONER SMITH:

2 Right. Can you talk about
3 where those, you know, sort of where
4 those people went and sort of what
5 circumstances are for them there, and
6 whether you have any information about,
7 you know, sort of issues around sexual
8 violence in any of those facilities?

9 MR. GUSMAN:

10 It's a good opportunity for
11 me to set some of the unfounded rumors
12 and lies about the -- about the storm.
13 We had 6,020 people -- inmates at the
14 facility. Every single last one of
15 them were evacuated safely to 38
16 different facilities in Louisiana, and
17 two in Florida. It was a tremendous
18 accomplishment, and really an
19 astounding feat due in large part of
20 the efforts of the staff that were
21 there. We reopened -- you know,
22 Katrina hit on August 29th, 2005. We
23 reopened one facility.

24 COMMISSIONER SMITH:

25 And were you sheriff at that

1 time?

2 MR. GUSMAN:

3 I've been sheriff nine
4 months. We reopened one facility on
5 October 17th, 2005. And when we
6 reopened that facility, the vast --
7 well, everybody was still out. And we
8 were -- we were basically only using
9 that facility as an intake for any
10 current offenders. And we weren't in a
11 position of bringing anybody back.

12 Courts hadn't opened back up
13 yet. And the courts didn't open up on
14 a partial basis until sometime in June
15 of 2006. And that was when we really
16 began to have responsibility to provide
17 the defendants into the courtroom so
18 the court could proceed.

19 During that period of time
20 between October of '05 to, roughly,
21 June of '06, we began the process of
22 returning people back to New Orleans.
23 But our facilities, again, were very,
24 very limited. And we -- we
25 reopened -- well, we opened rather a

1 temporary detention facility in
2 December of '06 with the help of FEMA
3 and GSA about a 700 or so bed facility.
4 It's been a continuing effort coming
5 back.

6 As far as, you know, the --
7 and see, another thing about our
8 population. Half of our population was
9 state sentenced inmates. So there
10 really wasn't a question of whether,
11 you know, we took those back because
12 they were -- they were just being held
13 by us, you know, as an accommodation to
14 the State, so the State kept that half.
15 The other half were a combination of
16 municipal offenders and also pre --
17 pretrial detainees. And it was really
18 the pretrial detainees that we focused
19 on getting back so that we could have
20 them -- have their day in court.

21 CHAIRMAN KANEB:

22 Thank you, Sheriff. Well,
23 you've certainly been through the war,
24 haven't you, early in your
25 administration? A positive attitude of

1 helping the whole system eliminate this
2 scourge which we call, broadly, prison
3 rape, but it is better described as
4 sexual abuse in prisons is the reason
5 we exist. And we -- we're here to help
6 you and your colleagues. So thank you
7 for appearing here today. We look
8 forward to communicating with you. And
9 again, thank you for a warm welcome to
10 the City of New Orleans.

11 MR. GUSMAN:

12 Thank you very much,
13 Commissioners.

14 COMMISSIONER AIKEN:

15 Thank you.