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

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

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

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

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

DOCTOR JAMES AUSTIN: Yes.

1 CHAIRMAN WALTON: And is that a factor
2 that conceivably may have an impact? I mean, if the
3 reverse were true, is it quite possible had you would
4 have more black men, because race is still an issue in
5 America, being raped, as victims, as compared to the
6 reverse?
7 DOCTOR JAMES AUSTIN: Yes. Let me
8 clarify what the statistics are -- what they're simply
9 saying, if you look at the victims, they are --
10 victims are disproportionately white and the
11 predators -- alleged predators are disproportionately
12 African-American. The percentages are also higher for
13 the whites than for the base -- when you get the base
14 rate for whites and for the base rate for the
15 African-Americans.
16 This is something that's been
17 discovered in a lot of the previous research on sexual
18 assault. It has nothing to do, in my opinion, with
19 any kind of natural propensity for whites to be
20 victims or blacks to be predators. It has to do with
21 a lot of other issues which we talk about in the
22 report. And so I'm not trying to make that point at
23 all. It's just -- but that is the fact, that they are
24 disproportionately of this different racial makeup.
25 CHAIRMAN WALTON: No, I wasn't

suggesting that you were suggesting anything. I just wanted to bring out that there are reasons why the disparity exists that has nothing do with the color of someone's skin.

DOCTOR JAMES AUSTIN: That's correct.

CHAIRMAN WALTON: Let me just ask. You also had indicated that individuals who go into protective custody sometimes, who have victimized, end up being the victimizer.

DOCTOR JAMES AUSTIN: Right.

CHAIRMAN WALTON: Does that mean when we put individuals into protective -- well, let me just ask.

When people were put into protective custody, was there any kind of classification assessment made as to what their propensity was to victimize?

DOCTOR JAMES AUSTIN: I would -- I would have to say, certainly nationally that doesn't happen. And I would probably say, in Texas that's not happening, also.

CHAIRMAN WALTON: So a decision was just made, well, these individuals were either at risk or were victimized, they're put into protective custody, but there is no assessment made as to whether

there should be any type of delineation of where people should be put there to avoid victimization?

DOCTOR JAMES AUSTIN: Well, there is probably some delineation in terms of a custody situation, but in terms of their propensity to commit sexual assaults in protective custody, that's -- I don't think that's happening in Texas or any other correctional system.

The point here that we were making -- it was an interesting finding for us, because you think of protective custody being a safe place. And what is happening, I think, clearly is that people that become victimized from sexual assault, when they get put into protective custody where the internal controls may not be as strong, some of that -- the same thing we see in alleged people that have been victimized as children, whatever, turn that -- that aggression onto other people at some point. And so I am kind of theorizing what is going on, but I think it's pretty evidence that just putting someone in protective custody is not going to solve the problem. Correctional officials need to keep track of who is in their protective custody units and make sure that people that used to become victims, not become predators and preying on other protective custody

prisoners. It's clearly what is happening in Texas. It's clearly happening there, so that's why we pointed it out.

CHAIRMAN WALTON: The other thing, back to the first issue because I'm interested in that. Regarding those white males who were victimized. Do you know if in the units they were in where that happened that they were disproportionately in the minority?

DOCTOR JAMES AUSTIN: We don't know that.

CHAIRMAN WALTON: Okay.

COMMISSIONER AIKEN: Just to piggyback on you in relationship to protective custody. At least my experience tells me and shows me that protective custody status, the motivation for and the justification for it has many different meanings. You can have an individual that has so many poor social skills that they couldn't get along with fifth graders, so to speak, and they could certainly not survive in an adult prison environment. And then you have the predator gang leader or gang member that denounced or turned State evidence against another gang member, and you have to put them in the same protective custody. And then you have the retarded

inmate that you can't stick anywhere else but protective custody. All of these people are in the same housing unit, and they are there for very different reasons, but they're in the same status. Am I in the right ballpark?

DOCTOR JAMES AUSTIN: Yes. Yes, you are. And I just want to add what this points out also in the -- we're talking about the information system. If you're an officer and say you're managing a protective custody unit. In the data system when we saw it, you could not look at what the allegations were that happened at other units. You can only look at the allegations that are occurring in your unit. So you're missing -- because a lot of these people are being transferred around in response to the allegation, so the data is not following the person. And this really gets down to management, basic management opportunities. You have to have the whole picture, not only of who the victims, who the predator is, but also the staff that have been involved, et cetera. So that's something that -- again, this to me is a simple fix. It's just opening up the computer screens to people that need to have access to it so we can watch all the information. And the more we're watching all of the information, I think the better

1 off we're going to be.

2 COMMISSIONER AIKEN: So you won't have

3 collisions, so to speak.

4 DOCTOR JAMES AUSTIN: Right.

5 COMMISSIONER AIKEN: And the second

6 point I want to raise is, I was listening at your

7 recommendations as well as -- of course, I have had

8 vast experience with you with correcting systems that

9 were deficient. Your recommendations don't have big

10 price tags to them. Is that correct?

11 DOCTOR JAMES AUSTIN: Right. The two,

12 to me, that are essential is the checklist on everyone

13 coming into the system. This does not cost a dime to

14 do. It's simply a one-page sheet, you see it, it just

15 needs to be filled out, and that gets everyone

16 thinking about the process.

17 The second thing is, I think every case

18 manager, every mental health person, any time there is

19 a structured event, there should be three or four

20 questions being asked every time of that prisoner.

21 The responses should be recorded. It's a natural pull

22 that's going on, and you can report this, you know,

23 week in and week out of all the interviews we were

24 conducting. You know, we're picking up 20 percent of

25 the prisoners are saying they're being threatened,

whatever it is. So this just should be what we call a routine activity. It doesn't cost a dime to do.

COMMISSIONER AIKEN: Okay. And getting to your points in relationship to the level of emphasis -- and I'm not talking particularly about the Texas system. I was talking about prison administration, or correctional administrations generically. Your classification system is the base for factual information in relationship to the protection and safety of inmate populations. Is that a fair assumption here? And oftentimes we have discussed, Doctor Austin, and I have seen, is there is a misconnect between the classification information system getting to policymakers.

DOCTOR JAMES AUSTIN: Right.

COMMISSIONER AIKEN: And policymakers listening to it and understanding it, they're making appropriate decisions based on that factual, validated information source. Is that correct?

DOCTOR JAMES AUSTIN: Yes.

CHAIRMAN WALTON: And that when there is a misconnect, there is a higher potential for sexual assault and critical events to take place because you're not listening to your own validated system. Is that correct?

DOCTOR JAMES AUSTIN: Right.

COMMISSIONER AIKEN: Okay. And the last point is this: I haven't heard testimony yet in relationship to having the proper level of emphasis to sexual aggression and sexual assaults in confinements institutions. You know, I don't see or have not seen, on a regular basis, the response, the level to an allegation of sexual aggression or assault, especially when I compare it when information is generated as to someone has found a way to escape from this high security prison. When information like that comes about, it goes through the chain of command like wildfire and people take decisive actions to make sure that we get ahead of that, to keep it from happening.

And does anyone have any suggests in relationship to bring the issue of sexual aggression and predator sexual behavior in a prison confinement setting to that same level of emphasis? And I don't want to hear this. Write a memo.

DOCTOR JAMES AUSTIN: Well, I just want to -- on that point, my biggest concern about the Texas system is the low rate of substantiations. Because I've done a lot of work looking at substantiation rates, and they need to be -- they should be higher or there is a lot of false reporting

1 going on. It's one of the two. And so I think that
2 is a concern, and when you look at the reasons for the
3 lack of substantiation going on, which is the fact
4 that the prisoners for some reason don't report it for
5 some days or weeks after it's occurred, the fact that
6 we can't get the evidence. I think Ms. Winter has
7 talked about the issue of -- and Lisa about
8 investigation protocol. There is an investigation on
9 paper and there is an investigation when you carry it
10 out, and I've seen, you know, the ability to interview
11 people, you go down and you find them, you keep on
12 finding them until you get a resolution. That kind of
13 an aggressive investigation, it looks a lot different
14 in the real world than it does on the paper world. So
15 I think -- I think that is what is needed. I think
16 Texas has made some progress, but I also feel that --
17 not only Texas, but all the other states, have a long
18 way to go still, not just on sexual assault, but
19 running safe prisons. That should be the point,
20 running safe prisons.
21 COMMISSIONER AIKEN: So in other words,
22 and I may be too simplistic, but we've got to address
23 these kind of issues the same way we address looking
24 for a lost screwdriver. And is it within the realm of
25 possibility that incidents do occur, critical

1 incidents do occur within the correctional setting
2 that are labeled something else that have something to
3 do with sexual aggression. For example, stabbings or
4 murders or suicide or overdose, or even attacking
5 another inmate, that there is a probability at least
6 that this incident went down as a fight when in
7 actuality the fight was over some type of sexual
8 misbehavior. Is that reasonable?
9 MS. MARGARET WINTER: There are three
10 things that really struck me about the level -- about
11 the question of corroboration and of investigation.
12 There are stereotypes that are so profoundly held
13 that, for example, not only in the Roderick Johnson
14 case, but in many cases, if a black prisoner claimed
15 to have been raped, especially if a black homosexual
16 prisoner claimed to have been raped, the assumption
17 that is apparent in the investigative reports
18 themselves is that that cannot be because black
19 prisoners rape, they don't get raped. And
20 furthermore, homosexuals are asking for it. So right
21 there, if one were to do an audit, we read -- we
22 studied hundreds of investigative reports and that is
23 the kind of pattern that we saw over and over again,
24 of racial and -- you know, sexual preference
25 stereotyping.

We also saw the screwiness of investigations in which, time after time, witnesses who were identified by the victim were not interviewed to preserve the integrity of the investigation, quote unquote. And then the victim was offered no protection because he could not substantiate his case.

I -- a third example I would like to give is from the OIG investigation, a document that thick, from the Roderick Johnson case. In which, when we finally got a hold of that report, which TDCJ released with great fanfare to the press, what we -- we read it and we discovered that it was -- it was -- it was Alice in Wonderland. That it was filled with witnesses who had seen that Roderick Johnson was being victimized. We went to the prison. We interviewed these witnesses. And at the risk of their own life, they testified that they had seen him being raped by the gangs. And some of them had even been involved. They had nothing to gain by this and everything to lose.

So I think the thing that has come up again and again and again of utterly independent oversight, and of auditing these documents, and of making them available. This stuff has to be chased down, these reports. They're not centrally recorded.

It was like chasing a moving target to find this information. And those themes are really what it's all about, the independent oversight and the transparency.

COMMISSIONER AIKEN: Let --

CHAIRMAN WALTON: We have got one minute.

COMMISSIONER FELLNER: One sentence.

Is there any evidence that anyone else has reviewed these incident reports and seen what the deficiencies are and what happened and transferred it into policies so it won't again, or transformed it into new design or renovations or training or anything of that nature?

MS. MARGARET WINTER: I don't believe that they are studied. I think they're destroyed under a regular document destruction policy after a -- quite a short time. That may have changed --

COMMISSIONER AIKEN: And it's not a big price tag on that, to do it, I don't think.

MS. MARGARET WINTER: No.

COMMISSIONER AIKEN: And has any policy been established, if a policy has been established, Doctor Austin, where inmates are not allowed to visit other inmate's cells during this 6:00 p.m. to 6:00

a.m., would that possibly would have an impact?

DOCTOR JAMES AUSTIN: Yeah. The trick there would be, the officers in those units know who the potential predators and victims are in their unit that day and are instructed to not -- you know, keep an eye on them and to watch them and make sure they're restricted in their movements. Again, that's the kind of data that have to go down to the unit level.

COMMISSIONER AIKEN: And there is no price tag on that either.

DOCTOR JAMES AUSTIN: No, sir.

CHAIRMAN WALTON: Commissioner Puryear.

COMMISSIONER PURYEAR: I'll try to be real quick. Just a couple of questions, Doctor Austin.

First, on a finding of dorms versus cells, is there any -- did you account for this likely classification difference between inmates that are housed in dorms versus housed in cell units, or is there any differences?

DOCTOR JAMES AUSTIN: There is some, but we looked at the differences in classification -- and that didn't predict -- in other words, we controlled for the classification level.

COMMISSIONER PURYEAR: Okay. And still

found that there was this statistically different disparity.

The second question is, with cells, I think there is a conception that double celling increases the likelihood of incidents like this versus single celling. Is there anything in your data to suggest that?

DOCTOR JAMES AUSTIN: No.

COMMISSIONER FELLNER: Did you look at it?

DOCTOR JAMES AUSTIN: No.

COMMISSIONER PURYEAR: Is there -- but --

DOCTOR JAMES AUSTIN: I'm just answering the question.

COMMISSIONER PURYEAR: Let me ask another question, then. If most of the events occur between 6:00 a.m. and 6:00 p.m. when largely, even in a single-cell environment, the doors are going to be open for free movement of inmates, do you still confront the same risk in a cell environment, whether it's a single cell or a double cell situation?

DOCTOR JAMES AUSTIN: The issue on double cell, who are you double celling, that's the issue.

COMMISSIONER PURYEAR: Right.

DOCTOR JAMES AUSTIN: So if you're double celling properly, this will not be an issue. If you're not double celling properly, then it becomes an issue.

COMMISSIONER PURYEAR: Last question. The issue of delay in forensic evidence as it relates to the substantiation for the complaints that are made. Were there any facilities that you looked at that had yet implemented camera systems and digital video recorders?

DOCTOR JAMES AUSTIN: No. Well, no. That's -- some of them did. Some of them did, yeah, but we couldn't -- I wasn't able -- there is not enough to say, here is delays that are occurring with digital recording systems and -- let me just -- can I add something on the camera thing, just real quickly, because I was involved in a major case in Louisiana juvenile. And they had the best camera system in the world. It wasn't until they started watching the tapes every morning that we got the incidents to go down.

COMMISSIONER PURYEAR: But if your -- in your investigation, I don't know if you found this, in the facilities that had that system available, if

in the investigation, if time had lapsed such that the rape kit would not be possible, the cameras might show that the perpetrator -- the alleged perpetrator and the victim were in a place where they might not should have been?

DOCTOR JAMES AUSTIN: Or --

COMMISSIONER PURYEAR: You know, if they were even checking.

DOCTOR JAMES AUSTIN: Right. Or they're out of the view of the camera, too.

COMMISSIONER PURYEAR: Right.

CHAIRMAN WALTON: Commissioner Fellner.

COMMISSIONER FELLNER: Yes. We've got planes to get.

I notice one of the points that Margaret has been making repeatedly is not just that there all these stereotypes and that those stereotypes lead to a failure to respond. In your report, you said that you did not think that there was organizational indifference. But I want to establish, you did not interview any inmates. Is that correct?

DOCTOR JAMES AUSTIN: Right. We were prohibited from doing that.

COMMISSIONER FELLNER: From any surveys of inmates?

DOCTOR JAMES AUSTIN: Not allowed to do it.

COMMISSIONER FELLNER: Well, there sometimes are -- well, that's something, it would be great if you could send us some information on --

DOCTOR JAMES AUSTIN: Our original proposal to NIJ included, we were going to go into the cases and interview the staff and the inmates involved, and we were told by the Federal government, you cannot do that because of IRB restrictions.

COMMISSIONER AIKEN: Well -- because then I don't know how you can make a finding about organizational indifference if the victims of that indifference aren't allowed -- haven't been able to talk to you.

DOCTOR JAMES AUSTIN: Right. We were talking to staff in general. You can talk to staff in general, and that's in the report, we make that clear, we talked to staff in general about their views about prison rape, about the --

COMMISSIONER FELLNER: So they gave the -- they said the right things. But I just want to make clear that you did not really -- weren't able to test the level of indifference or, to put it positively, you weren't able to test the level of

rigor and care with which complaints were responded to because you weren't allowed to talk to the people who are making those complaints. That is correct?

DOCTOR JAMES AUSTIN: I take your point, yes.

COMMISSIONER FELLNER: Okay. One other quick question. You've mentioned in your report that -- the problem with delay and, therefore, forensic. But I noticed that 30 percent of the people -- the incidents were reported the same day, and yet only 11 percent had rape kits. So by your data that is suggesting that in 20 percent of those cases, even though they were reported the same day, there was no rape kit. Do you have a sense of why?

DOCTOR JAMES AUSTIN: Off the top of my head, no. I would have to go back and look at the information. I can get back to you.

COMMISSIONER FELLNER: Okay. And I would like to follow up you on the IRB and also, your table 27 got mislabeled, and I'll show it --

DOCTOR JAMES AUSTIN: Okay.

COMMISSIONER FELLNER: -- point that out. Great. Thank you.

DOCTOR JAMES AUSTIN: Thank you.

CHAIRMAN WALTON: Okay. We appreciate

your testimony. I'm sure it will be very helpful to us as we proceed with our deliberations. If we do think of other questions, we may get back in touch with you and we'd appreciate if you respond to those because that would be helpful.

So thank you very much for your presence and your testimony.

The hearing is now adjourned.