conclusion, OFDT will continue, the Office of the Federal Detention Trustee will continue to work with other federal agencies, local counties, sheriffs, police departments and this Commission to meet this challenging mission with diligence and determination, in addition to the continued partnership with fellow law enforcement agency efforts to ensure the safe, secure, humane housing of federal detainees in non-federal facilities.

I welcome your questions and observations and thank you again for allowing the Office of the Federal Detention Trustee to testify on this important issue.

CHAIRMAN WALTON: And we thank both of you for your presence here in coming to Austin to present your testimony and your testimony itself. Ms. Lowry, in reference to -- I think you indicated there is one case that is still pending.

MS. HEATHER LOWRY: Yes.

CHAIRMAN WALTON: When did that allegedly occur?

MS. HEATHER LOWRY: Was it the juvenile case or the --

CHAIRMAN WALTON: It was the first one you mentioned.
MS. HEATHER LOWRY: Oh, the first one?

When did that occur? That occurred four years ago.

CHAIRMAN WALTON: In reference to those facilities that you have said there was an issue with their compliance, what happens in that case?

MS. CLAUDIA HILL: What happens in that case is that the facility must report back to the Office of the Federal Detention Trustee in the form of an action plan as to their -- how they will meet those requirements. They also give a date of compliance, in which the Office of the Detention Trustee then goes back to ensure that they have met the requirement.

That is either through physical observation, or if it is a matter of policy that needed to -- to be implemented, then we will request a copy of that policy to review.

CHAIRMAN WALTON: Can you classify what type of problems were identified?

MS. CLAUDIA HILL: For example, in the Workforce Integrity, lesson plans, actual training of staff regarding sexual assaults were determined not to be in place.

The -- in the Administration and Management area, for the orientation and admission, the information not only being provided verbally but
also written, in some cases, were not being provided.

CHAIRMAN WALTON: Those were the two areas that you identified?

MS. CLAUDIA HILL: There are several areas as we go out, but those are two of the main areas. Administration and orientation where the detainees are not either verbally or in writing provided the information on how they can report if they're being victimized.

CHAIRMAN WALTON: How many facilities nationwide are we talking about?

MS. CLAUDIA HILL: Well, the -- the government actually has over 1,200 facilities that they utilize. The Office of the Federal Detention Trustee, at this time, focuses on all private facilities and what has been established as an average daily population of 500 or more large Intergovernmental Agreement agencies.

Now, we also partner with the United States Marshals Service, specifically, Ms. Lowry's division, in special requests. So any of the governmental agencies, if they have a concern, do request that we go out to perform these quality assurance reviews.

COMMISSIONER FELLNER: I would like to
follow up on a couple of those. So there are 1,200 facilities in all. That includes immigration, it includes local jail stays, some are IGA, some are not, some are private and some are not. Is that right? In response to the judge's question? There are 1,200 facilities.

MS. CLAUDIA HILL: Yes. Nationwide.

COMMISSIONER FELLNER: Nationwide. And you said that the trustee focuses on those that are private and those that are larger than 500.

MS. CLAUDIA HILL: That's correct.

COMMISSIONER FELLNER: How many inmates, then, are in facilities that are not within the -- your jurisdiction?

MS. HEATHER LOWRY: About 60 percent.

COMMISSIONER FELLNER: So 60 percent.

And you pointed out -- first of all, if you're doing -- wait a minute.

How many facilities, then, in all are you -- of the 1,200 are actually ones that you are looking at?

MS. CLAUDIA HILL: We're actually providing oversight right now approximately 20 to -- approximately 20 facilities.

COMMISSIONER FELLNER: That's all?
However, the Marshals Service has an inspection process that they utilize, too.

COMMISSIONER FELLNER: I'm sorry. Let me see if I understand this. Out of the 1200 facilities, you are only -- you only have jurisdiction over 20?

MS. CLAUDIA HILL: We have the responsibility of providing the oversight for the private facilities.

COMMISSIONER FELLNER: Uh-huh.

MS. CLAUDIA HILL: And specific Intergovernmental Agreement facilities. At this time, that comes to a -- an approximate number of 20.

COMMISSIONER FELLNER: So who -- how does the Federal government, which has responsibility for this, ensure that appropriate standards and policies exist and are being followed in the other 1,180 facilities? I understand you said in your testimony that, you know, they're already subject to PREA. But as we all know, some places are trying hard to put -- and some places are not. You have no ability to go into those other places to check how they're doing?

MS. HEATHER LOWRY: Let me jump in
COMMISSIONER FELLNER: I'm sorry. I'm thinking of, like, immigration, not the Marshal ones, but where they're already now in immigration facilities, for example.

MS. CLAUDIA HILL: Homeland Security has their own detention standards, and they conduct their own inspections. They are not part of the Department of Justice.

COMMISSIONER FELLNER: Okay. And does the Marshals Service use the same standards that they do -- have?

MS. HEATHER LOWRY: The Marshals Service uses an abbreviated version of the standards. We don't have 200 pages. We have nine sections and we have 59 standards. They are from ACA, but they are not as extensive as their standards are. But we inspect all facilities we use.

COMMISSIONER FELLNER: I wondered if you could provide the Commission with a copy of the standards themselves and with the -- what in your testimony you gave -- you sort of broke out in the general headings, could you provide us with all of that?

CHAIRMAN WALTON: Both sets.
MS. CLAUDIA HILL: Yes.

COMMISSIONER FELLNER: And could you give us a copy of each of the quality reviews that were done in 2006 and 2007?

MS. CLAUDIA HILL: Yes, I can. I can also provide you with our website that also has the standards listed.

COMMISSIONER FELLNER: Okay. And does it have -- does it list the quality assurance reports? Are they on the website? I don't want to take up time if it's already there.

MS. CLAUDIA HILL: No, the quality assurance reviews are not on the website.

COMMISSIONER FELLNER: And I had one other question for you, Ms. Lowry, and then I will cede to my others. You said that there were only three -- three known incidents of sexual abuse allegations. How many allegations have you had of excessive use of force by staff or violence among inmates that aren't defined as sexual abuse, but in which there is -- as our Commissioner Aiken often points out, things may be reported as violence which may have had a sexual component but not be listed or registered as a sexual assault.

MS. HEATHER LOWRY: Unfortunately, we
don't track those. We have -- if there is an incident in a cellblock, then it's written up and they're tracked within the district. But unless it were something that were to rise to the level of a lawsuit, it's not tracked.

COMMISSIONER FELLNER: Huh. So you don't know if there -- what the levels of violence are in your facilities?

MS. HEATHER LOWRY: Well, we don't have facilities -- the cellblocks?

COMMISSIONER FELLNER: The cellblocks that you are using.

MS. HEATHER LOWRY: Not at this moment, we don't.

COMMISSIONER FELLNER: Okay.

COMMISSIONER SMITH: I actually -- now, getting back to this whole number of -- can you hear me?

MS. HEATHER LOWRY: Yes.

COMMISSIONER SMITH: Great. That you had three incidents over 20 years.

MS. HEATHER LOWRY: Yes.

COMMISSIONER SMITH: Now, is that incidents that have risen to the level of litigation or is that also three allegations over 20 years?
MS. HEATHER LOWRY: That have risen to the level.

COMMISSIONER SMITH: Okay. So what is the level of incidents that you had over, let's say, the last ten years?

MS. HEATHER LOWRY: That's all we've tracked. Because of our monitoring and because prisoners are -- are never left one-on-one with one deputy, one prisoner in a cellblock confined area, we don't appear to have incidents that rise to the level -- like, rise to the level of lawsuits in -- except for the three that I mentioned.

COMMISSIONER SMITH: Let me ask you a question. If I'm an inmate and I'm in a U.S. Marshals Service custody, is there a procedure where I know, for example, how to make a report about my conduct, about something that happens to me? What is that process like?

MS. HEATHER LOWRY: You would notify the deputy in the cellblock.

COMMISSIONER SMITH: And when am I told that?

MS. HEATHER LOWRY: You're not.

COMMISSIONER SMITH: Okay. Let me ask you a question, Ms. Hill. You have indicated whenever
there is an incident, right, that what happens is,
from the IGAs, that incident then gets recorded back
over to the appropriate agency.

MS. CLAUDIA HILL: That's correct.

COMMISSIONER SMITH: Can you tell me
how many -- do you have -- you said you also have
control over U.S. Marshals Service facilities as well.
Is that right?

MS. CLAUDIA HILL: We do not have
control. We go in and provide the oversight.

COMMISSIONER SMITH: Or oversight. Do
you have a number in terms of the number of reports of
those incidents that have gone back to the Marshals
Service for 2006 or 2007?

MS. CLAUDIA HILL: No, we do not. What
our quality control review team does is that we
actually collect the statistics for assaults. One of
the areas that we have encountered difficulty is -- is
the way the various facilities can or cannot separate
assaults, sexual to be specific.

Also, one of the problems that a lot of
the local facilities have is when they house both
federal and local detainees, they do not have, at this
time, the ability to be able to provide to us how many
of those assaults were federal detainee assaults and
how many were local assaults.

COMMISSIONER SMITH: So if I'm understanding this correctly, because, you know, I've got to get a visual here. Currently in the Federal system -- and this may be -- currently, the Federal system is not engaging in the same data collection efforts as the states are currently under PREA?

MS. CLAUDIA HILL: I cannot respond to what the Federal --

COMMISSIONER SMITH: Okay.

MS. CLAUDIA HILL: -- area is doing, simply because we are providing the oversight for the federal in non-federal facilities.

COMMISSIONER SMITH: Right. But let me ask Ms. Lowry, then. Are you doing the same kind of data collection that the states are doing, using the BJS definitions?

MS. HEATHER LOWRY: No, we are not.

COMMISSIONER FELLNER: Is there a reason why not?

MS. HEATHER LOWRY: I don't believe we've been asked. And I know that sounds a little ignorant, but I don't believe we've been asked, because I know we're more than willing to track or to develop any type of system we need to if this is
important to do.

COMMISSIONER SMITH: And one last

question. One of the things that I haven't heard in
terms of the standards and a continuously persistent
issue that the Commission is looking for -- and I
think this would, actually, Ms. Hill, go under the
standard of, I think, Workplace Integrity, I think.
Is that right?

MS. CLAUDIA HILL: Yes.

COMMISSIONER SMITH: And also, I would
like a response from Ms. Lowry as well. Is there
anything in the standards that talks about referral of
these matters for prosecution?

MS. CLAUDIA HILL: At this time in our
standards, no.

MS. HEATHER LOWRY: No.

COMMISSIONER SMITH: Okay.

CHAIRMAN WALTON: Commissioner Nolan.

COMMISSIONER NOLAN: Yes. Ms. Hill,
are you -- is there an analogous institution to yours
that looks at the Federal facilities, the Bureau of
Prison facilities?

MS. CLAUDIA HILL: The Federal Bureau
of Prisons.

COMMISSIONER NOLAN: Is there someone
doing the type of analysis that you're doing? For
instance, the Federal detention centers, are you aware
of any?

MS. CLAUDIA HILL: I cannot really
answer for what areas the Federal Bureau of Prisons is
responsible for.

CHAIRMAN WALTON: You have the Federal
detention facilities. Right?

MS. HEATHER LOWRY: No.

COMMISSIONER NOLAN: No. That's
Transport.

Ms. Lowry, when you take prisoners like
to El Reno, you basically give jurisdiction over to
the BOP at that point you remove them from the plane
or the transport. Is that correct?

MS. HEATHER LOWRY: Yes.

COMMISSIONER NOLAN: I guess, trying to
follow up on what the other Commissioner said, my
hunch is it's more likely that if there were a
complaint, the shot would be filed at the receiving
institution rather than with your Marshals.

MS. HEATHER LOWRY: Yes.

COMMISSIONER NOLAN: And is there any
way of tracking, for instance -- at El Reno, just as
an example, because there are so many prisoners who
travel through there, is there a process for El Reno to accept those shots and turn them over to the Marshals Service, or do you know what the process would be?

MS. HEATHER LOWRY: Right now, there is no formal process. They would just notify the local Marshal's office in that area. Because they're -- part of -- they're supposed to notify of an significant incidents, including sexual assault, they would notify that. The Marshals would send the deputies out to interview the prisoners, the staff, to find out about, you know, the allegations.

COMMISSIONER NOLAN: Now, the three that you talked about were actual lawsuits. Are you aware of any complaints that didn't rise to the point of lawsuits?

MS. HEATHER LOWRY: Casual complaints. And I mean casual as that they were written up, they never rose to lawsuits, and that was -- that, basically, was from -- I sent out an e-mail to the different districts saying, any situations, whether they were lawsuits or just incidences that you all have. Because, honestly, we do not track them right now in any kind of database.

COMMISSIONER SMITH: Let me just ask
another question.

So on the one hand, you have Ms. Hill with this 200-page document --

MS. HEATHER LOWRY: Yes.

COMMISSIONER SMITH: -- for these private facilities that has very detailed standards, including those related to training and for -- training for staff, and orientation for offenders who are in those facilities. And then on the other side, with the U.S. Marshals Service, you don't have a process in place right now where offenders get orientation or training about how they might report this? I'm just asking.

MS. HEATHER LOWRY: No. That's correct.

COMMISSIONER SMITH: What about staff? I mean, have staff been trained about their obligations under PREA?

MS. HEATHER LOWRY: The Marshals Service? No. Because -- if I can just continue one second.

COMMISSIONER SMITH: Okay, sure.

MS. HEATHER LOWRY: Because the Marshals Service -- because we don't own or operate facilities, we entrust the facilities that are housing
our prisoners to manage their jail, to handle all they
normally do for state and local prisoners. In fact,
that's what we tell them. You know, do the same for
us as you would do for your prisoners.

COMMISSIONER FELLNER: But that's
actually my question to both of you. How do you make
sure that the facilities in which you are entrusting
the people who you have responsibility for are safe
places? You mentioned, for example, that you don't --
you know, that some of the local jails -- we mentioned
that some of the local jails don't break out, you
know, whether these assaults are against federal or
state. I would think you would want to know,
regardless of whether they're federal or local inmates
who are being injured, how violent is the place you
are confining people. How dangerous, and if they're
not -- you said that they're not currently
contractually obligated. Why not?

MS. CLAUDIA HILL: Let me try to answer
some of your concerns.

COMMISSIONER FELLNER: Yes.

MS. CLAUDIA HILL: The United States
Marshals Service has the responsibility to negotiate
these intergovernmental agreements, in which the
Office of the Federal Detention Trustee does -- is not
involved in that. The districts -- and I'll allow Ms. Lowry to speak on this -- the districts do their own negotiation and work with her division regarding the responsibilities. We do go out, OFDT, that has the responsibility for the private contracts, and conduct preinspection to, number one, make sure that what the facility is stating to us or has placed in writing to us actually operationally performs those functions and provides the services. So that's prior to the detainees being placed in that facility. And then, again, we perform those reviews every year or as needed to ensure that those services are being continued in those facilities.

COMMISSIONER FELLNER: Now, it seems that the facilities that fall under you, it sounds like an admirable system. And maybe it needs to be tinkered with or something, but it sounds good. But I'm actually, quite frankly, surprised to hear how many facilities aren't -- that you're not negotiating or requiring them to meet the standards; that you don't seem to be getting a flow of information by which you can determine, you know, are these violent or dangerous jails that you're housing people in.

MS. HEATHER LOWRY: Well, I should clarify. First, we do have a thorough inspection
program. Every district has inspectors that goes out at least once a year to inspect the facilities, besides the fact that our deputies are at these facilities almost every day, so they have a very good relationship with these facilities as far as information flow.

As far as our standards, I share your frustration. Okay? Federally, we have no -- they have no obligation in any legal way to abide by our standards.

COMMISSIONER FELLNER: If you put it in the contract, wouldn't they have to as a contractual matter?

MS. HEATHER LOWRY: Yes. If they would sign it.

MS. CLAUDIA HILL: Intergovernmental agreements are not --

COMMISSIONER FELLNER: It's money for them.

MS. HEATHER LOWRY: Well, but -- and this is where it also gets frustrating. Except for the private contracts, which we have statements of work and are controllable and are easier to deal with, the intergovernmental agreements for the state and local facilities are basically a -- I'm going to pay
you money, here are some conditions, we hope you abide
by them, thank you for taking my prisoners. But you
can turn around tomorrow and say, I don't want your
prisoners any more. Unfortunately, in a lot of areas
of the country, we can't be picky. We try -- that's
why we try to work with these facilities as much as we
can. But, legally, they don't have to take our
prisoners. We have had numerous facilities throughout
the country that have said to us, you know, I have to
take the state and locals, I don't have to take the
federals. If you guys cause us any problems, legal
problems, litigation problems, the prisoners complain
too much, they can tell us to remove our prisoners.
So --

CHAIRMAN WALTON: You know, I
sympathize because I deal with it every day. And I
sympathize with your frustration. I mean, you know,
some may not understanding, the reality is what you're
just saying. I know in the District of Columbia area,
we have a significant problem finding facilities to
house D.C. federal offenders. It's a real problem.

COMMISSIONER NOLAN: And this is not --
because I hadn't finished some of the things I was
going to do. The Marshals are in a pickle here in
that you basically are -- in custody for transport
mostly. You're driving across the country, you come
to a local jail you have an agreement with, and you
drop the prisoners off to stay overnight, and then
pick up and drive the next day. Isn't that a lot of
what your IGAs are?

MS. HEATHER LOWRY: No. Mostly our
IGAs are -- I'm in Virginia, so in Alexandria,
anything close to the court, we try to use.

COMMISSIONER NOLAN: Right.

MS. HEATHER LOWRY: And those places
are usually state and local. Every now and then you
do have facilities that are connected to courthouses.
But they're usually state and local, so you make an
agreement with them as much as you can.

COMMISSIONER NOLAN: Right. And you
probably -- because you're a bigger part of their
business, have more control. But I'm talking about
the prisoners you're transporting. When you drop a
prisoner off overnight, my experience is that the
federal prisoners are the bottom of the totem pole.
They sleep on the floor by the toilets because the
locals don't care about them. They aren't their
constituents and --

MS. HEATHER LOWRY: Well, and the irony
is --
COMMISSION NOLAN: And you don't have any control over them.

MS. HEATHER LOWRY: The frustrating part when you do deal with them sometimes is that when they tell us that, well, these are federal, and we say, no, no, they have Federal charges. A lot of these are local prisoners, they just have Federal charges.

COMMISSIONER NOLAN: Right. Yeah.

COMMISSIONER FELLNER: But in all of the facilities, then, if our standard -- if we develop standards that are applied to all of these facilities that you feel that you can't contractually bind to your standards, but if those standards become sort of obligatory nationwide, that would take care of some of the problem. I'm just -- I'm concerned that there is this quite sizable pool of people on an annual basis who goes through who aren't, in fact, under any good protections. We -- at Human Rights Watch we did some research a number of years ago on some of the parishes in Louisiana. This is not where you want to be housing people. And I understand the difficulty, but -- so that -- we could help in that sense because then you wouldn't have to put them in your contracts. They're already obligated, if they were Federal
standards.

MS. HEATHER LOWRY: That would be wonderful.

COMMISSIONER SMITH: And I guess my last point is, from my perspective, what I'm most concerned about is the lack of data, the lack of information, and the lack of training. While certainly it's interesting to me, and certainly we'll send a message to our friends over at the Bureau of Justice Statistics that you're just waiting to be asked to do data collection. But there is certainly particular requirements of the Prison Rape Elimination Act that don't actually require you to wait for anybody, that talk about particular practices, that talk about particular areas around prevention, around safe communities, that all agencies should be undertaking.

And, actually, what is quite interesting to me is that it feels like, in the states, many of these agencies have stepped up, but that in the Federal arena where we generally expect the practice to be somewhat more evolved and sophisticated, that it actually hasn't. So --

CHAIRMAN WALTON: Do you have a staff? I mean, how large of a staff do you have?
MS. HEATHER LOWRY: In the Prisoner Operations section of the Marshals Service?

CHAIRMAN WALTON: Yeah.

MS. HEATHER LOWRY: Well, we probably have -- we have four branches and we probably have about 18 people. But of those branches, there is a medical branch, there is the contracting IGA branch, then there is my branch which has four inspectors, then there is also a -- basically, we call them a numbers branch; they keep all of the data.

COMMISSIONER FELLNER: Four inspectors for how many facilities that you're moving people in and out and housing them?

MS. HEATHER LOWRY: Four inspectors in headquarters for all of the facilities for the entire country.

COMMISSIONER FELLNER: Which is --

MS. HEATHER LOWRY: But we do have --

CHAIRMAN WALTON: Which is 1,200?

MS. HEATHER LOWRY: As far as the inspectors as far as that conduct the inspections, those are throughout the country. That's a collateral duty for deputies, among the many other things they do in district.

COMMISSIONER FELLNER: Are they trained
in how to do inspections?

MS. HEATHER LOWRY: Yes. They have a week training course down at Plessey (phonetic) and they also have constant, I guess, contact with different individuals up at headquarters if they have questions or information they need.

COMMISSIONER FELLNER: Can I just ask one -- short. Before there is national standards, wouldn't there be -- and I understand fully the problems of the local and state. They like getting your money because you generally pay more than it actually costs them, but they don't want to have to do anything different than they're already doing. Couldn't you, though, require them to give you statistics on what is going on in their facilities?

MS. HEATHER LOWRY: In the inspection report, we do ask them. There are three areas. We ask them about escapes, assaults -- well, serious assaults and lawsuits. And as Ms. Hill stated earlier, it's defining assaults that appears to be an issue.

COMMISSIONER FELLNER: But you don't include on that, staff mis -- you know, excessive use of force or any staff misconduct? I assume "assaults" there is just inmate-on-inmate assaults?
MS. HEATHER LOWRY: No, we haven't. We had it -- we put it in the inspection form and said, inmate on inmate or inmate on staff.

COMMISSIONER FELLNER: What about staff on inmate?

MS. HEATHER LOWRY: I believe we also have that one in there. But that's -- it just depends on if they're tracking it and how they define an assault.

COMMISSIONER FELLNER: I'm sure they're very --

CHAIRMAN WALTON: Any other questions? Okay. We'll break at this time for about five minutes and start back on time at 10:30. Again, we thank you for your presence and your coming down to Austin to present your testimony. Thank you.

(RECESS.)

CHAIRMAN WALTON: So we can remain on time, we're going to get started. I assume the other Commissioners will filter back in.

Our next panel will address the problem of the operation of lock-up facilities and also law enforcement standards. Our next two witnesses are Mr. James Brown and Mr. Ronald -- Ruecker?

MR. RONALD RUECKER: Ruecker.
CHAIRMAN WALTON: Ruecker. Okay. If you could please stand and take the oath.

(Witnesses sworn in.)

CHAIRMAN WALTON: If you could, please, starting with Mr. Brown, identify yourself, and then Mr. Ruecker identify yourself and tell us what you do.

MR. JAMES BROWN: Good morning. I'm James Brown. I'm the Associate Director for the Commission on Accreditation of Law Enforcement Agencies, out of Fairfax, Virginia.

CHAIRMAN WALTON: Thank you.

MR. RONALD RUECKER: Good morning. My name is Ron Ruecker. I'm the First Vice-president of the International Association of Chiefs of Police. I'm currently serving as the Interim Chief of Police in Sherwood, Oregon, and just recently retired a few months ago as the Superintendent of the Oregon State Police.

CHAIRMAN WALTON: Okay. I would ask that before we get started with the testimony, could everybody please turn off your electronic devices because I think that's what is causing the feedback. We would appreciate it. Okay. Thank you.

Mr. Brown.

MR. JAMES BROWN: The Commission on