Mr. Fields.

MR. JAMIE FIELDS: Yes. I would like to thank you for the opportunity to appear today on behalf of the Detroit Police Department and Chief of Police Ella Bully-Cummings. The Detroit Police Department is heartened that the Prison Rape Elimination Act shows a high level government recognition of the problem of prison rape. We applaud the development of national uniform standards and guidelines addressing the prevention, reduction and punishment of rape or sexual assault occurring to persons within a correctional setting. Although the Act limits the Attorney General's discretion in issuing standards by requiring that the final rule not "impose substantial additional costs" on prison systems, we are hopeful that any additional standards or guidelines would be accompanied by corresponding funding and/or resources required.

It appears that the main focus of the Act is the collection of data. That, in and of itself, is a laudable and worthwhile goal because the lack of quantifiable data and research as to the depth and the scope of the problem in police lock-ups leads to difficulty for local jurisdictions in designing
effective and responsive prevention efforts.

However, as you are aware, it is a goal that is fraught with difficulty because of the unavailable observations of -- of underreporting inherent in prison assaults. While the scope and nature of the problem is debatable, largely because of this historical underreporting of rape and sexual assaults, the seriousness of the issue is not debatable.

When photos of United States military personnel sexually abusing and humiliating Iraqi prisoners were made public, most American citizens were sickened. In testimony before Congress, then-Secretary of State, Donald -- Secretary of Defense, Donald Rumsfeld, described what happened at Abu Ghraib as "fundamentally unAmerican." However, from the research that has been conducted, prison rape and sexual assault occurs in American prisons at an alarming rate. This is a national issue that begs for uniform standards and guidelines. Prison rape and sexual assault not only cause an untold amount of physical and emotional damage to victims, 95 percent of whom will one day be released back into society, but also has lasting scars on the American conscience.

In its 1994 decisions in Farmer versus
Brennan, the United States Supreme Court held that by allowing a prisoner to sexually assault another prisoner, it violated the Eighth Amendment of the United States Constitution against cruel and unusual punishment. The Supreme Court unanimously held that officials "have a responsibility to safeguard prisoners from violence perpetrated by other prisoners." The Court adopted a subjective deliberate indifference standards to determine whether officials' response to the risk of rape violates the Amendment. Rape and sexual assault are serious crimes under the laws of the State of Michigan. There is no exception when such crime occurs inside detention facilities, whether committed by a prisoner or committed by an employee. The Detroit Police Department has a zero tolerance policy for any abuse or mistreatment of detainees. This has been communicated to our members via training and by vigorously investigating and disciplining members who violate our policies. This has also been communicated to the public with extensive publicity to let the community know how to file citizen complaints and that the Department is serious about investigating and disciplining wrongdoers.
policy states that facilities should foster an
environment where reporting of sexual assaulitve
behavior is encouraged, and reports may be made
without fear of reprisal.

The Detroit Police Department citizen
complaint policy mirrors that statement, by informing
all members that the public image of the Detroit
Police Department is determined by a professional
response to allegations of misconduct against its
employees. All complaints against the Detroit Police
Departments and/or employees are accepted and
investigated fairly and impartially to determine the
validity of allegations and impose disciplinary
actions that may be justified. The policy further
states that no member of the Department shall refuse
to take a citizen complaint or discourage, interfere,
delay, or obstruct a person from making a citizen
complaint.

In addition, the Detroit Police
Department's written policies and practices provides
mechanisms for a citizen making complaints against
member of the Department confidentially or anonymously
by telephone, fax, e-mail or letter, or in person at
any facility.

However, as any law enforcement agency
recognizes, you cannot merely enact compliance through policy development. Policies must be trained on and implemented and vigorously enforced. An allegation of criminal activity or excessive force by an employee requires immediate response by investigators, who send forensic support and evidence techs, and assistance as required by specialized command.

In the case of a sexual assault by a -- one of our employees, or an allegation of sexual assault, Internal Affairs and Sex Crimes would respond to the scene. Over the years we have had a small number of allegations of employee sexual misconduct. Those allegations have been thoroughly investigated and prosecuted to the fullest extent of the law. These investigations have resulted in criminal convictions and/or terminations of employment. We agree completely with the testimony of other witnesses that the term "consent" has no place in the discussion of sexual relations between a police or detention officer and a person detained in custody.

One area that we would like the Commission to consider is the role of labor arbitrators. The Commission would be mistaken if it believed that the Chief of Police of any department is the final decision maker on discipline. Pursuant to
the public employee labor relations laws in many
states and many collective bargaining agreements, that
role is performed by unelected and largely
unaccountable arbitrators. While arbitrators play an
essential role in maintaining harmonious labor
relations, they are sometimes insufficiently attuned
to the ramifications of their decision to put
employees back to work who have been terminated for
sustained misconduct. If the Commission could address
this issue, it would be a positive step. Labor
arbitrators need to know the scope of the problem and
why dismissal is the appropriate penalty in cases of
this nature. They need to be sensitized to the fact
that a prisoner may be deterred from reporting sexual
assault because he or she does not think the word of a
prisoner will be believed by a police officer.

The Detroit Police Department currently
operates five prearraignment holding facilities with
each holding facility comprised of approximately 20
cells in five different police districts. There are a
total of six police district stations in the city of
Detroit. Our goal is to process all arrestees out of
our custody in the shortest time possible. Our
procedures set 48 hours as a key time period, in
conformity with the guidelines as set forth by the
U.S. Supreme Court in County of Riverside versus McLaughlin, which created a presumption that warrantless detention for more than 48 hours without judicial review of the grounds for detention violates the Fourth Amendment to the United States Constitution.

In 2001, in a virtually unprecedented move, the then mayor of the City of Detroit, Dennis Archer, invited the Department of Justice in to the city of Detroit to look at our practices and procedures. Subsequently, the city of Detroit and the United States Department of Justice voluntarily entered into two consent judgments: Use Of Force and Witness Detention and the Conditions of Confinement consent judgment.

In November 2001, the city of Detroit elected the Honorable Kwame Kilpatrick as mayor of the City of Detroit. Both Mayor Kilpatrick and Chief of Police Bully-Cummings embraced the letter and the spirit of the Consent Judgment and made compliance the highest priority.

The Conditions of Confinement Consent Judgment has resulted in unprecedented attention to our conditions of confinement. Since the inception of the Consent Judgment, the Detroit Police Department
has increased its holding cell area staffing to include a cellblock supervisor, implemented continuous video observation, which is also recorded and is held for 90 days, in all holding cells and holding cell areas, required comprehensive medical and mental health screening within two hours of initial intake, increased lighting to ensure that there is 20-foot candle illumination in every cell and there are no blinds spots, and revised our detention management policies, and adopted an objective written classification system.

The Detroit Police Department's objective classification system separates, not only like many departments do, by sex, age, and nature of offense, felony or misdemeanor. In addition, most of our detainees are placed in single cell, specifically, even misdemeanors that are violent are placed in a single cell, co-defendants or arrested crime partners are segregated by sight and sound from each other, misdemeanor detainees who return from the hospital and are recovering from physical injury are put in a single, anybody with infectious disease who refuses to answer any or all questions on our detainee intake forms are placed in a single-occupancy cell and segregated from other detainees, material witnesses
who are in custody based on court order are placed in single-occupancy cells, and transgendered or vulnerable detainees who either appear, based on an officer's observation, or indicate that they are at risk from predatory or assaultive behavior, based on a detainee security questionnaire that is done at the time of the initial intake, are placed in single cells and separated from other detainees, high profile detainees, either because of their offense or the nature of the crime are placed in single cells, and anybody who is charged with any type of sex offense, even if it's a misdemeanor sex offense, are placed in a single-occupancy cell.

The Detroit Police Department has developed a prisoner training lesson plan, based on best corrective research, provides annual training and update to all officers and cellblock supervisors, which is a 32-hour training block.

The Detroit Police Department has gone beyond the objective classification system offered by the majority of holding facilities in the country. Despite efforts to adopt an objective system in U.S. prisons and state jails, many state Departments of Corrections do not collect the data needed to assess an inmate's risk of harming others. Nearly 40 percent
1 of Correctional Departments do not collect information on whether a weapon was used in the prisoner's offense and 12 of the nation's 52 Departments of Corrections do not collect information on an inmate's history of violence.

The Commission is correct in perceiving that there are differences in correctional facilities operating at the state and local level. In developing standards, these differences cannot be over emphasized. To develop meaningful standards and prevention efforts, it is first necessary to briefly examine the pathology of rape and sexual assault in a correctional setting.

Research has indicated that prison rape is "a stark demonstration of power. The pursuit of power via sexual violence and the enslavement of weaker prisoners is an integral feature of imprisonment throughout the United States in both jails and prisons. In this way, it mirrors heterosexual rape in the wider community."

Those who were targeted for sexual assault were incarcerated on average 143 days before the first sexual encounter, and the physical plant and equipment issue may be associated with increased rates of victimization. By contrast, the holding cells in
the Detroit Police Department operates and a jail, the
differences are enormous. The majority of our
detainees are held for less than 48 hours, and the
dynamics associated with the jail or prison subculture
are nonexistent. In addition, Detroit Police
Department holding facilities do not provide detainees
with showers, opportunities for recreation, or the
eating of meals outside of their cells, or many of the
interactive programs that are usually provided in a
prison or jail. This is significant in terms of
limiting the opportunities for sexual misconduct. In
addition, the smaller size of our facilities and
higher staff ratios also reduces the opportunities for
sexual misconduct.

However, let me stress that prisoner
rape and sexual assault can occur in any correctional
setting regardless of the size of the facility or the
number and quality of its policies. As the
investigation into the Abu Ghraib scandal indicated,
the leaders and the soldiers were aware of the
requirements and expectations to treat detainees
humanely, and it was their duty to report incidents of
abuse. The study found that underlying cause was
two-fold: An individual failure to adhere to the
basic standards of discipline, training and Army
values, and leadership failure to provide oversight and enforce standards.

Therefore, while we welcome uniform standards based on "best practices," we understand that such standards are only foundations and it's up to the departments to go about the -- it's just like a personal protection order. They're only a piece of paper and it's up to the leadership in the police department to make sure that officers are reporting misconduct.

We have very strong policies on reporting misconduct of employees by other employees, and we do constant training on that and other areas to make sure that it's driven from the top down, because it's got to be driven from the Chief of Police straight down.

Thank you very much.

CHAIRMAN WALTON: Thank you, Chief.

MS. ANDREA RITCHIE: Good morning. I would like to begin by just sharing a few of the many incidents of sexual abuse I am aware of in police and court lock-ups before discussing the issue in broader teams.

On November 24th, 2002, Denise Almodovar, Sarah Adams, Candace Ramirez, Becki Taylor,