facilities rather than federal facilities.

In conclusion, the greatest challenge the Navajo Nation faces is the continual increase of mandate of incarcerated inmates, which are hindered by lack of funding, lack of facilities, lack of manpower. Most importantly, with all these challenges, I commend my staff. And as I sit before you, our staff are very professional, providing the direct service to those that are incarcerated that no one has become victimized in our facility. It is not say that it will never happen, but without end, the environment does exist.

Ladies and gentlemen, thank you.

CHAIRMAN WALTON: Thank you very much for your testimony.

Mr. Rivera, there were a number of reports you identified. I'm going to ask our staff to get in touch with you. Hopefully, we can identify where we can get those reports --

MR. GUILLERMO RIVERA: Two specifically -- two specific reports that you probably will be interested in. One with the gap analysis, which was --

COMMISSIONER FELLNER: Gap?

MR. GUILLERMO RIVERA: Gap Analysis
report, which was done after surveying the majority of the facilities out in Indian Country, which will give you a -- a better picture of the staffing pattern in detention facilities in Indian Country.

The other one is the Shubnum report. The Gap Analysis is completed, so we can provide that to you upon request. The Shubnum report is in the preliminary stages of being finalized. Once it has gone through the Director, Pat Ragsdale, it'll be open for public information, so --

CHAIRMAN WALTON: Do you have any idea when that will be completed?

MR. GUILLERMO RIVERA: I -- we believe that we have the preliminary report already, and I believe it has been submitted to Mr. Ragsdale. So once he reviews it, he is also going to be going -- utilizing that for justification for additional funding in the future. I would think maybe a month, two months at the most.

CHAIRMAN WALTON: Considering the unique relationship that exists between Indian tribes and the Federal government and the matter of sovereignty, what do you all think is the best thing that we can do or the things that we could do as a Commission as far as recommendations are concerned
that would best assist addressing the problems that relate in detention facilities on Indian Country?

PROF. KEVIN GOVER: Two things occur to me, Mr. Chairman. The first is to -- to suggest that we need much more information about the scope of the problem in the Indian jails. I was looking at the BJS reports for 2004 and 2005, and they have seven jails, I think, that they're getting reports from. And the 2005 report indicated that it wasn't a sufficient sample to make a -- to really provide a reliable rate, and so we don't know what the scope of the problem is. That's the main thing, it seems to me.

Second is that in developing the recommendations that the Commission makes regarding other facilities, that perhaps Mr. Rivera's people or somebody make a realistic estimate of what it will cost the Indian jails to comply. Because the reality is that we can set standards, as many standards as we would like, but if the resources simply aren't available to the tribes, they're not going to meet those standards. And it would be a tragedy, let me suggest, if the Indian jails were left behind in this effort to improve the jails generally.

MR. GUILLERMO RIVERA: Yes. I think that what we need to look at -- this is just my
professional opinion -- it's not whether it's Indian
Country or whether it's out there in the county jails,
because I guarantee you, in my tenure of two years
with the Bureau of Indian Affairs, I have closed
somewhere around four to five facilities that were
just totally, totally unsafe and just falling apart,
and I wound up taking these people out the jails where
they were on the reservation and put them in county
facilities. Hopefully, I would put them in county
facilities that are safer than where we were. Okay?
But I think the issue is not whether -- it's the right
thing to do. What this Commission wants to do, what
you are going to do, what you have tried to do is the
right thing to do. What we have to have is the
resources.
You know, I'm -- when I first took over
the Bureau of Indian Affairs, I was staffed at 30
percent. Now I'm at 50 percent and people are telling
me it's wonderful. When you get copies of these
reports, you're going to see -- you know, in my
preliminary report in there, I indicated that Shubnum
had visited 38 facilities. Out the 38 facilities that
he visited, he recommended closure, not replacement,
not repair, but closure of 90 percent of those
facilities. I can tell you -- and this is just off
the top of my head -- my minimal amount of experience.

If we were to replace those facilities today, the cost
of replacing those facilities today with the same
amount of beds, you're looking at six billion dollars
for a 40-year cycle. So that's what the issue is.
And these facilities -- these facilities, the ones
that Shubnum is recommending closure are falling
apart, are in bad shape.

So we -- you know, the standards are
good and we need to move in that direction. And I do
not think -- Mr. Sampson Cowboy is here and he
might -- I don't think he'll disagree with me. I
think this is the right thing to do. This is the
thing that we need to do. But if there aren't any
resources attached to this, you know, we'll do our
best, but I don't think we'll achieve anything.

COMMISSIONER SMITH: One of the --
first, thank you for appearing, because, certainly,
one of the questions that has emerged in various
conversations about the Prison Rape Elimination Act is
its application to facilities in Indian Country. And
so I guess my question would be, is it your
understanding and are you operating under the
assumption that the Prison Rape Elimination Act
applies to facilities in Indian Country?
MR. GUILLERMO RIVERA: I can only speak for the direct service programs of the Bureau of Indian Affairs, which are 20. Yes, we are operating under that assumption. The remainder of the facilities that are out there, I don't think you're going to get an argument, because the majority of the folks that I have spoken to, you know, jail administrators, chairmen in Indian Country, they feel it's the right thing to do and it's the right direction to go.

COMMISSIONER SMITH: So you're involved in the BJS data collection? I mean, I'm just asking --

MR. GUILLERMO RIVERA: No. Yes. We got involved -- the problem with the BJS data collection is that -- and if I could be very point and direct -- is that they will take this form, they will send it out to Indian Country, they will say, please fill out the form and send it back.

Well, first of all, why do I need to fill this out? Who are you to tell me to fill this form out? So they weren't getting anything but maybe five tribes were filling out, out of the 561 recognized tribes. So one of things I recommended to BJS is -- and we got involved with them about nine
months ago -- is that I have what we call quarterly meetings where the district supervisors go out and just set up meetings and invite the tribes. I recommended to BJS to go out and talk to the tribes and see if the information that they were trying to gather made any sense. In some cases, it didn't, so they even changed the format.

The Bureau of Indian Affairs tries -- are in the process now of trying to collect data. The problem is, there isn't a standard data collection format anywhere in Indian Country. So that's one of the things. You know, trying to -- within the Bureau of Indian Affairs, we collect our own data. Trying to get data from the tribes, that's a different story.

COMMISSIONER SMITH: So, Mr. Rivera, when I talk about -- and I'm just asking.

MR. GUILLERMO RIVERA: Sure.

COMMISSIONER SMITH: You know, when I talk about whether the position is that PREA applies, you know, one of the biggest, most visible parts of PREA, at least right now, is the data collection. But what I'm hearing from you is that the data collection sort of process doesn't really work well in the way that Indian Country is structured. Is that fair to
MR. GUILLERMO RIVERA: Yes. Because if you're relying on -- well, if you're relying on BJS to collect the data, but the data that is collected is not going to be complete. Except we -- the BIA provides the data, but not all the tribes are providing that data.

CHAIRMAN WALTON: Mr. Cowboy, what do you think about what we've been talking about?

MR. SAMPSON COWBOY: First of all, the first question that you raised, I appreciate what this Commission is doing, and I'm under an impression that this is going to apply to us, too. I think if it is, then, you know, it sends a message not only to the Indian Country out there, I think it sends a strong message to the Bureau of Indian Affairs, too. And that's what we appreciate.

The other thing about data collection is, if you work with the tribes, I think they're under the perception for years and years, we have been submitting data, we have been submitting data on a quarterly basis and on an annual basis, but we never get a feedback. I think that's where the Indian tribes are coming from is a lot of times they submit their data, but they don't get a feedback. And if
there is a feedback that comes with it, we'll
understand what is going on out there and what the
datas are being used. The perception is that a lot of
times when we submit our data, is that they're using
our numbers to enhance their numbers. That's the
perception out there in Indian Country, and that's how
we view it, too.

The -- right now, I think, as we speak
about data, we went on our own to Navajo Nation. We
have a lot of data to share. We -- we are taking the
lead role in Indian Country in improving our
technology and that complements our data. So we are
doing that and it's out there. And if anybody needs
it, we have the data.

The other thing about the facility that
was brought out is, we're running our own facilities
since 1959. And how are you going to manage the --
these issues that are arising, the sexual assault and
stuff like that. It's going to be -- it's there, I
can say that, because of the facility. The facilities
are not up to standard. They're -- they were built
like a dormitory in some areas, and it's really not
feasible to have that one-man visual security that
they've built per -- up in today. So there is a lot
of issues there.
And the other perception that we have out in Indian Country is, when we talk about curing some of these issues, social ills or inmate ills and stuff like that, we always point back to the facility. When are we going to get a facility. When you talk about -- let's say, if the Commissioner goes out there in Indian Country, the question is going to be raised, what are you doing here? Are you helping us getting a facility? And that's -- that's the perception. I think that's what I bring is the perception, what is out there. Not more than what I'm trying to justify how we can improve a lot of these things. There is a lot of perception out there right now. Thank you.

COMMISSIONER SMITH: Well, certainly one of the issues -- and I think individual Commissioners asked it and certainly the entire Commission asked it -- is you understand that under the Prison Rape Elimination Act, there are grants, but Indian Country was not eligible to receive any of the grants. And so I imagine that that may have contributed -- Mr. Rivera, I see you going --

MR. GUILLERMO RIVERA: Well, the problem is real simple. The BIA is a Federal agency, and we receive our appropriations through Congress. Congress says, okay. BIA, this is what you're going
to have. And we tried to make the buck go as far as
we can, where we felt it'll go. But you can only
stretch the dollar so far. And to give you an
example, Homeland Security. A lot of the states
received a lot of money through Homeland Security, yet
we have tribes that are sitting on the borders that
didn't receive a penny, because that money was not
filtered down. So --

COMMISSIONER SMITH: And the same would
be true --

MR. GUILLERMO RIVERA: And I guess
that's the just the way it was determined that it was
going to happen and -- and, please, I'm not here to
question the powers that be in Congress, but that's
basically what happened.

PROF. KEVIN GOVER: Well, I'm not
constrained, since Mr. Rivera is a Federal official.

Two things have to happen in order for
the tribes to partake in these programs. The tribes
did, during the creation the Department of Homeland
Security, point out that they have major border lands.
At the Toono O'odham Nation in Arizona, it has a long
border with Mexico, and went in and said, look, we
need some of this money, too. And by the way, once
they began to address the problem over in San Diego
and in Texas, well, guess where the illegal immigration moves to? It moves to the reservation. It will move to the point of least resistance. That's the reservation because the tribe simply doesn't have the resources to put adequate numbers of people on the border.

And so there -- we have to get the Congress to understand that the tribes really are part of the American Federal system when it comes to law enforcement. They have recognized that in other areas, for example, environmental protection. But for some reason, law enforcement quite never makes the grade.

Second, we have to get the Executive Branch to acknowledge the same thing. It's an extraordinary Attorney General who really makes much of an effort to understand the Department's law enforcement responsibilities in Indian Country. It's sort of mundane. It's common, the jurisdiction that the FBI, for example, has on Indian reservations where they're investigating -- pardon the expression -- garden variety assaults, rather than fighting terrorism or fighting the drug war, and all these things that -- that are the current priorities. And so Indian Country law enforcement traditionally goes
begging, both in terms of the resources, the investigative resources of the Federal Bureau of Investigation, and the prosecutorial resources of the United States Attorneys. Because the U.S. Attorneys, as we have learned just recently, are watched very closely in terms of statistics, among other things. How many prosecutions can you bring, how many drug convictions can you get, how many illegal immigration convictions can you get. And, again, basic law enforcement, prosecution for the basic offenses, murder, sexual assault, common assault, robbery, burglary, et cetera, on the reservation, simply doesn't take place. So they end up in the hands of Mr. Cowboy, with his inadequate facilities, his inadequate resources, and they're expected to address major crimes with county sheriff type of resources, and it just can't be done.

COMMISSIONER FELLNER: Mr. Cowboy, I wondered if -- I'm trying to follow this and I read the testimony that was submitted by Mr. Gover. You know, Indian law and all of this is -- and the divisions, it's certainly different for me to get a hold of and so quickly. But I realize, as I'm listening, I still don't have a sense -- okay. Not enough people, not enough -- the facilities aren't
good, all of those problems. That exists, actually,
in lots of rural, non-Indian Country areas, too. I
mean, we've heard about it today and we can go to any
number -- any state into rural and you're going to
have those same problems, without the -- obviously,
the jurisdictional issues.

But I wondered if you could talk a
little more there from your perspective about what you
see as the nature, if there is a problem of sexual
abuse in the jails or lock-ups. Is it staff on
detainee or is it inmate on inmate, and other than
better facilities, you know, what a lot of people --
what are the sort of steps that you think could be
taken and should be taken now to address that, or that
the -- we, the Commissioners, should at least be
recommending be taken?

MR. SAMPSON COWBOY: Thank you.
The -- from the Navajo Nation, again,
one of the factors is the training for personnel in
the facility. We don't have individuals that are
trained to detect assaults, gathering, preserving
evidence within our facility, for various reasons.
One, it goes back to the training. Secondly, that we
have a high turnover, so we have to continue to train
these individuals. Third, is that, you know, the
salaries are so low that people are just leaving. You know, you train them and they leave. And third is the facility itself. The facilities aren't built to where you can see visually, provide security from one location. You have to walk. These are the facilities that we're talking about. There is facilities that you have to walk in a circular, you know, area to -- in order to cover all the facility. And when you're covering the facility, there are some blind spots there, so -- you know, and to actually say somebody has been sexually assaulted, you know, they have to report it. And that's where a lot of these training, I think -- if you're going to make some recommendations, I think in Indian Country there has got to be some training for these staff that needs to come with.

The other area regarding the facility, I understand there is a lot of issues out -- also outside that -- and in Indian Country. However, a lot of these buildings that we have built are in the '50s. That's why you don't have these visual security that they have that they built. And they have pods now. We don't have pods, we have cell rooms. We have sections that those -- we're still in that area. And we have walls that have -- that provide blind spots.
We don't have these clear windows to visually see these people. We still have those walls and then we have those steel doors that are still in place. So these are some of the issues that we have.

COMMISSIONER FELLNER: I understand the facilities problem and you've described it eloquently. But I'm still not understanding, do you have a problem with sexual abuse in your facilities and is it a problem of inmate-on-inmate abuse, is it a problem of staff-on-inmate abuse, and what steps -- I also hear you very much about turnover and training. But have any steps been taken to date for -- for example, on grievance systems or on informing inmates or -- has anything been done to address sexual abuse if it is, in fact, a problem? I'm still not clear if it is a problem.

MR. SAMPSON COWBOY: Ma'am, I was getting there with my story here. It's taking a little longer.

The problem, we don't know how extensive it is, but we know it exists. There have been some reports on inmates-on-inmates assault. There has been report on staff-on-inmates assaults. These -- and in those cases, their reporting came during transport, not at the facility. It was in
the -- during the transport. That's some of the
reports that we have received.

What steps are we taking? Well, right
now we're working with IHS, mental health. They come
in, they provide some screening for us. We also have
Behavioral Health, which comes in from the tribal
program, also provides some counseling for these
inmates to give us some information.

Right now there is a sexual transmitted
disease that's taking -- that's a pilot project that's
taking place in our facilities. So there is a lot of
gathering of data in that regards. But how extensive
to pinpoint to give you the exact number, I can't do
that right now. We're not at that level right now.
We're not that -- I guess we're concerned right now,
we're at the preliminary stage and going in that
direction.

I hope I answered your question, ma'am.

COMMISSIONER FELLNER: Well, I think --
I mean, I understand that you don't have specific
numbers. And if I hear you correctly, you say there
have been a few incidents during transport.

MR. SAMPSON COWBOY: Yes, ma'am.

COMMISSIONER FELLNER: So you're saying
you're not aware of any incidents in the facilities
MR. SAMPSON COWBOY: The facility -- inmate-on-inmate, yes, there has been reports. But on staff-on-inmates, there hasn't been a report recently -- well, way back then, yes, there -- when I was a criminal investigator, it was probably in the '90s, in the mid '90s, that is when we had some reports.

COMMISSIONER FELLNER: One other question. We've -- in a lot of the hearings, we have heard that inmates are very reluctant to make reports of either abuse by staff, because then they fear retaliation, or abuse by other inmates, for whole set of reasons, retaliation, shame, the sense that it doesn't do any good, et cetera, et cetera.

Do you believe in Indian -- and some of those are sort of culturally specific to facilities and cultures that grow up within prison cultures. Do you believe, in Indian Country, that inmates who have been abused, either by staff or by other inmates, would come forward, or do you think there is a failure to report or a reluctance to report in Indian facilities, the same as in many other facilities outside of Indian country?

MR. SAMPSON COWBOY: I think we as --
living in a Native American community, we're very reluctant to report any crime. A lot of crime that occurs on family on family, and when it comes to Indian Country inmate, it's almost like distant relatives on distant relatives. So, you know, that's how it would be. And I guess in essence we're -- we view ourselves is that we're all related, so we really don't report the crime that takes -- takes upon us. So that's one area of concern that we have identified to, the lack of reporting.

And the other thing is, you know, there is a high number of sexual abuse among our youth, our kids out there. So a lot of these people have been abused when they were small and they are also abusers that is incarcerated, so there is -- for various reasons they won't report it, because they also were involved in that when they were growing up.

COMMISSIONER FELLNER: Thank you.

COMMISSIONER KANE: Mr. Rivera, did I hear you correctly when you were giving an estimate of what it would take to replace the useless facilities that now exist at six billion dollars?

MR. GUILLERMO RIVERA: You heard me correctly, sir. Now, understand, when I say six billion dollars, I mean 90 percent of the 38
facilities that we visited, at the existing bed
capacity, for a life span of 40 years, you will need
six billion dollars to maintain that for 40 years.
COMMISSIONER KANE: Oh, okay.
MR. GUILLERMO RIVERA: Follow what I'm saying? If you were replacing the bed capacity of
those 38 facilities as they stand now.
CHAIRMAN WALTON: Six billion to
construct and maintain?
MR. GUILLERMO RIVERA: Right. There is no sense in building it unless you can maintain it.
COMMISSIONER KANE: Yes. No, I do understand that. But the capital cost of the physical
plant replacement is a lot less than six billion dollars.
MR. GUILLERMO RIVERA: Yes, sir.
COMMISSIONER KANE: Okay. That's all I wanted to understand. Okay. Thank you.
MR. GUILLERMO RIVERA: Now, the final phase of that Shubnum report, like I indicated, will be completed probably in a month or so and the numbers will be exact, giving you a better idea what the cost will be.
COMMISSIONER KANE: Okay. Then, just switching to the prevalence or lack of prevalence of
sexual abuse in Indian Country facilities. My take, after listening to all of you, is there is a fairly high suspicion that such abuse may be fairly -- at a fairly high level, but because of lack of, let's say -- if I can misuse a word that's used a lot now -- lack of transparency in the physical facilities, so you can't really tell what is going on. And, more importantly, cultural prohibitions, inhibitions, constraints, whatever, on reporting to anybody, much less the outside world, any sort of measurement of prevalence is -- is going to be difficult, bordering on the impossible. I mean, I'm just asking if that's a fair assessment.

PROF. KEVIN GOVER: Not impossible, but very difficult. And I think that you'll find that the Indian inmates will be more reluctant than most to report. It will be a real challenge to get meaningful data on this, at least at most facilities. There are some that are more modern, they would have access to information in other ways. But you're absolutely right, it may be impossible to find the extent of this problem.

COMMISSION KANEK: More reluctant, why?

PROF. KEVIN GOVER: For the reasons Mr. Cowboy was talking about. I mean, it is cultural
in the sense that we -- it's hard to even -- take a battered spouse. We all know that a battered spouse is reluctant to report in the culture at large. We've found they're even more reluctant on Indian reservations. Certainly, the exploitation of children, the same thing. We find that it's -- that Indian children are even more reluctant to say what has happened to them than others. And I do think that it's because -- because of the shame that Mr. Cowboy is talking about. These are close-knit communities and even the idea of telling somebody of what a relative has done to you is -- is -- it's very, very hard. And so I am confident, just from my experience working with Indians for -- for my entire life, really, that it's grossly underreported and probably always will be.

CHAIRMAN WALTON: Thank you for your candor.

COMMISSIONER SMITH: Just one last question, sort of following that up. To your knowledge, among the three here -- and this isn't the only barometer, but just a question. Are you aware of any prosecutions of either staff or inmates for sexual violence in institutional settings in Indian Country?
COMMISSIONER FELLNER: And who would have jurisdiction -- no, I'm just saying, and who would prosecute?

MR. GUILLERMO RIVERA: I'm sorry?

COMMISSIONER FELLNER: And who would have responsibility for prosecuting?

MR. GUILLERMO RIVERA: Well, it's -- I believe it's considered a felony so it would be the U.S. Attorney's Office.

COMMISSIONER SMITH: Are you aware of any?

MR. GUILLERMO RIVERA: The one I am aware of is up in Sioux Country, I believe Pine Ridge. They -- and I don't have -- this is many years ago. I don't know, maybe five or six years ago. Sampson might have heard of it. Where a juvenile was placed in an adult facility and he was raped repeatedly by adult inmates. That was reported and was investigated. Now, whether it was prosecuted, I do not know. But that was -- again, that's a -- that's not a direct service program, that's a 638 program that's handled by the reservation.

MR. SAMPSON COWBOY: The question, how we handle our issues out in Navajo Nation is, we prosecute them in the tribal court, also, and then we
jointly work with the FBI to prosecute it in a Federal court. Our Internal Affairs also looks at the policy, if the policy has been violated, or the procedures that have been violated. So there are several steps that we take. Right now, I don't know -- we haven't had any investigation or any report that's before us right now as I'm sitting here.

The other thing that we do is, with all incidents that involves detention facility or -- or a police officer, we submit that to BIA in the form of what had happened. So there is layers of reporting that we do.

COMMISSIONER SMITH: But as between the collective folk who are here on the panel, there is one incident that you can recall?

MR. GUILLERMO RIVERA: I recall that one incident, and that was because that was one of the things that prompted the separation of the adults, to ensure that there was a separation of juvenile and adults. But, again, I do not know whether that was prosecuted.

PROF. KEVIN GOVER: I believe that it was. And let me just add that the only -- and just sort of a general awareness, the only time these matters are sufficiently grave to warrant the
attention of Federal officials tends to have been when it involved juveniles. And there was a problem in the jails for a long time, which Mr. Rivera and his predecessors worked very hard to clean up, where juveniles were being housed with the adult inmates and that obviously is a recipe for exploitation.

CHAIRMAN WALTON: Anyone else?

Well, thank you very much and I hope we can do some good and make some recommendations that will make a difference. So thank you very much.

COMMISSIONER FELLNER: Did you decide, you think, that the Pine Ridge incident was five year -- no, you can still get up and get your stuff. I'm just -- was it five years, ten years? I would like to actually follow up on that one.

MR. GUILLERMO RIVERA: I think it was about five years old.

COMMISSIONER FELLNER: Which state?

Montana?

MR. GUILLERMO RIVERA: South Dakota.

COMMISSIONER FELLNER: Okay.

CHAIRMAN WALTON: We're adjourned until 9:00 o'clock tomorrow morning. Thank you.