DOCTOR JAMES AUSTIN: My name is James Austin. I'm the president of JFA Institute, which is a private, not for profit research organization, headquartered in Washington, D.C.

I'm here because, in 2004, my research firm was awarded a grant from the National Institute of Justice to do an evaluation of the Texas program of sexual assault within the Texas Department of Criminal Justice.

I'm going to -- I submitted written testimony, but in the sake of brevity, I'm going to hit what I think are the highlights of the evaluation and things I want the Commission to focus on.

As everyone should know, Texas has the highest number of sexual allegations being made in the country. Each year about five to 600 allegations of sexual assault are being made. These are inmate-on-inmate. There is another 50 or 60 where it's staff-on-inmate. Our study narrowly focused on the inmate-on-inmate assaults. We did not have enough cases to look at the allegations of staff-on-inmates.

I also want to make a couple of points, which is not in my testimony, which I think is
important. My research was severely restricted in terms of what we could look at because of what's called human subject review. We're not allowed, through the IRB process, to talk to prisoners or staff who have been involved in sexual assaults as part of the research agenda. So I would really urge the Commission, if they could, to look into this, because it's really restricting what researchers can do in terms of evaluating the impact of these procedures.

The second thing is that, on the issue of the database that the Texas system has. It's an excellent database, but there are some things in their database that could be improved in terms of access, which I'll comment on later, which I think would improve their ability to monitor and deter sexual assaults from occurring.

That aside, we looked at 2,000 officially-reported sexual assaults that occurred between 2002 and 2005. As I mentioned, they had the highest number of alleged incidents. It produces a rate of about four per 1,000 inmates per year. This is four times the national average. It also has the lowest substantiation rate. So it has the highest number being reported and its rate of sustaining those is the lowest among in the country.
Historically, they've always had a high number of sexual assault allegations being made. In 1993, when they first started reporting it, it was about one per 1,000 inmates, up until about 2001, and then it started to escalate. And this coincides with the passage of the Safe Prisons Program in 2002. So since they've implemented the program, the number of allegations has increased substantially.

Now, this is purposeful to some degree, because, one of the goals of the Act is to increase the reporting of allegations. The question is, you know, are these allegations true in nature or are they unfounded. And that's something that the research couldn't really address very well. We do have some good information about why we think some of the allegations are difficult to substantiate.

One of the major reasons is that the allegations by the inmates are not being reported in a timely manner. Only 30 percent are reported within the same day, and often have no independent witness to the allegation. So this delay in reporting and the absence of witnesses makes it very difficult to sustain an allegation.

Another important statistic was that most of these allegations are reported to have
occurred in cells. They are not occurring in the
dormitories. So it's the cellblocks that are the most
dangerous places for these allegations of sexual
assault that occur.

Over 50 percent of the sustained cases
involved forensic evidence from a rape kit or forensic
exam. On the other hand, rape kits and forensic exams
were performed in only 20 of the alleged sexual
assaults. A primary reason for not completing the
time lapse, so anything that can be done to
get the forensic evidence collected in a more timely
manner would have a tremendous impact on the
substantiation problem.

On the attributes of the victims and
the assailants, what we found pretty much mirrors
what's been found in other studies. First of all, a
very small percent of the prison population as
classified as a victim or assailant, about two
percent. This is important from a research point of
view because if you're trying to predict who is going
to be an assailant or who is going to be a predator,
you can't do it statistically. There is not enough of
what we call a base rate of identification. So trying
to come up with a model that says, when someone comes
in, they are very likely to fall into one of these two
categories is probably not going to work. What you can do, though, and I'll talk about this at the end, is a checklist of potential factors that we know are associated with this phenomenon, and that would be useful to do.

White inmates are attacked more frequently than any other race, about 60 percent, while two-thirds of the assailants were involving black assailants. 19 percent were Hispanics and -- I'm sorry. 19 percent being Hispanic assailants, and 12 percent white assailants.

In general, the victims are three to four years younger than the assailants. Although only 12 percent of the allegations involved a mentally ill or intellectually impaired prisoner, this is eight times their proportion in the population. So people that have this kind of factor are much more likely to become victimized.

We also found that within the safekeeping units, there was a high rate of victimization going on. And this was explained, we think, by the fact that prisoners that are requesting protective custody, who have been victimized or attempt has been made to victimize them, when they go into protective custody, they themselves become the
predators on the weaker inmates that are in the PC units. So it's important when departments create these protective custody units, that they're separating within that unit people that might be victimizing further, or people that might become assailants.

If we looked at the management techniques of housing units that separated so-called high-rate facilities and low-rate facilities, we found a number of things that we think are relevant to your work.

First, in Texas, staff at all levels were found to have a clear understanding of the organization's expectations and goals as it related to the Safe Prisons Program requirements. So all the training they're doing is taking hold, staff are aware of it, they know what the objectives are, so that's a good, positive sign. We didn't find any indication of organizational indifference at any of the facilities. However, there may be some individuals, obviously, that that still have that perspective. But, basically, staff seemed to be aware of what they're trying to do and the value of doing that.

Solid cell fronts, while permitting privacy for the inmates and reducing noise within the
unit, also provides a degree of privacy that prevents sexual assaults to occur. So it's these old, traditional cell doors that we think need to be replaced, or management needs to take a more proactive response if they have large numbers of cellblocks with these solid cell fronts.

Most of the assaults occurred between 6:00 a.m. and 6:00 p.m., during the day, in the cellblocks. And what is happening, we believe, is that because of all the activity that's going on, staff are easily distracted from what is going on in individual cells and that's when the sexual assaults are occurring.

Now, I want to conclude by making a number of, I think, important points, and I'll let the other speakers make their presentation.

I think it's important to understand, in our perspective, what we found is that prison rape needs to be seen in the larger context of assault, aggressive behavior going on in prisons. The persons that were labeled as predators had lengthy disciplinary records, not only in sexual assault, but also in other kinds of coercive behavior. So just overall management of the prison is what we're looking for. That will reduce sexual assault and other bad
indicators in prison operations.

There are some specific recommendations that we made to Texas, and I'm making to other correctional systems that I don't believe have been implemented as of yet, but I think, if they were, they would reduce sexual assaults.

First and foremost, there are what I call structured routine activities that go on in any prison where we need to take advantage of them to allow the prisoner to report in a confidential manner, are they being assaulted, are they being threatened.

This is a technique that we used successfully in a number of litigation matters that I've been involved with which reduces the rate of this -- of assaults in general occurring. So, for example, when case managers meet with their inmates, they should always be asking them, are you being threatened? Is anyone threatening you? Are you being assaulted? Are you seeing any of this activity going on? That is not yet a structured routine in the Texas prison system, and I think it could be easily implemented.

On the issue of data sharing, they have an excellent database, but if you're at a particular unit, you can only see the allegations that are occurring for your unit. You can't see the
allegations that are occurring statewide. This may
have changed, but when we finished our study in 2005,
that was the situation. That means you can't see all
the information that's going on about sexual assault,
which I think would be very valuable to the system.

There -- we were concerned on what
happens to prisoners who make an allegation but the
case cannot be substantiated. There are a large
number of these cases in Texas. You know, it's the
vast majority. When that occurs, what they tend to do
is to transfer the person to another unit, but there
is not sufficient follow-up in terms of, what is going
on with that case, what was the nature of that
allegation, why are we transferring this person. In
some cases, it could almost become a punishment. You
report something, we're going to transfer you to
another place. That could disrupt visitation, jobs,
et cetera. So that technique needs to be evaluated.

The low rate of officially reporting
sexual assault on prisoners means that it's not
practical nor recommended that a traditional risk
scoring system be attempted. What we are
recommending, and I attached to my testimony a
checklist, that can be applied to every prisoner
coming into the system. Texas does not have a
checklist. Very few people have this kind of a checklist. The reason we want a checklist is because it's more objective in looking at every case in the same manner. And if you get a certain number of checks on that checklist, that would indicate that you're a potential victim or a potential predator, and that would be helpful, I think, in making sure that nothing slips through the cracks.

Finally, we want to acknowledge that our research did not address the issue of sexual assault among female prisoners. It was commonly stated to us in Texas that the rate of sexual activity among the female prisoners is substantially higher than it is among the men. And the perception, unfounded, is that it's largely consensual. I don't think we know that, and I think we need to investigate much more in depth what is going there among the female prisoners, which is an area of research that has yet to be conducted.

Thank you.

CHAIRMAN WALTON: Thank you very much.

Ms. Luna.

MS. LISA LUNA: Good afternoon. My name is Lisa Luna. I'm a training specialist with the Texas Association Against Sexual Assault. I'm also a