in and out of other cells than they would after 6:00 p.m.

CHAIRMAN WALTON: Thank you.

Ms. Graybill, thank you -- you're not late. We started early.

Would you take the oath.

(Witness sworn.)

CHAIRMAN WALTON: Thank you.

MS. LISA GRAYBILL: Thank you.

CHAIRMAN WALTON: But you're not late.

We started early.

MS. LISA GRAYBILL: I feel better.

Thank you.

My name is Lisa Graybill. I'm the Legal Director at the ACLU of Texas. I've been here for two years. Before that and I was at the U.S. Department of Justice, also doing prison work.

I was asked and plan to speak specifically to Texas's Safe Prison Program. And my review is primarily based on the manual that we obtained via an Open Records Request. The last iteration of that manual that I was able to get is from 2005. And the manual is laid out, I believe, into six sections. It concentrated the review on three, which are prevention, intervention, and then
Some of my comments are certainly framed by the experience that Margaret and I shared working on the Johnson litigation, but I tried to set most of that aside and really focus on the way the manual is now, because the Johnson litigation predated this iteration of the manual.

We have particular concerns. I would say, overall, the manual is certainly an important step at both acknowledging the problem that exists in Texas and laying out at least a preliminary strategy to address it. For the ACLU of Texas, the primary vehicle of information that we get, the way we receive information about what is actually happening inside the prison facilities is via inmate complaints. And we have a web-based complaint system, which doesn't particularly serve inmates in state facilities, who largely do not have access to the Internet, but many of their friends and relatives do. And we also accept complaints via letter.

So we receive somewhere in the range of 2,000-plus inmate complaints a year, and that's by letter, and then an additional probably 500 or so by computer. So it's through those complaints, which are, of course, anecdotal, that we get a sense of what
is going on. And regrettably, I would say that based on our complaint load, it appears that despite the strides made by the implementation of the Safe Prison Program, there is space for improvement still.

And I would concentrate my comments in the three areas, again, of prevention, intervention, and then investigation.

With regard to prevention -- actually, I would like to just start by reading something that struck me. At the beginning of the Safe Prison Program, I felt like this put in context the assumptions with which the prison program is made. And this is the introduction to the 2005 version. These are the -- this is the statement:

"An offender does not have to prove his life is in danger to obtain protective custody, safekeeping status, or one of the other options available for protecting offenders.

"An offender does not have to undergo assault before receiving protection."

"An offender does not have to fight his predator in order to receive protection, and sexual abuse should not be a way of life in prison."

The fact that that was the initial statement or introduction to the Safe Prison Program
told me that TDCJ is still operating with the assumption that sexual abuse is, in fact, a way of life and they need to make a statement. Those statements are in the negative. They don't talk about the offender's right to serve their time protected from harm by -- that's the constitutional obligation. They don't talk about the offender's right to file a complaint and have a grievance promptly addressed. Instead, the rights are all framed in the negative, and I thought that set the tone for the rest of the manual.

With regard to prevention, we are concerned about two things. One is that there is sort of a labyrinthine process set forth in the Safe Prison Program Manual, where is various cycles of accountability and reporting and forms, but it's -- the only person who has clear responsibility and accountability is the Safe Prison Program Coordinator, the Unit Safe Prison Program Coordinator. And that single individual, that person, is not necessarily a dedicated staff position. That can be an individual who has multiple tasks, and when you're talking about -- when you're talking about facilities with from 500 to 1500 inmates, not even having one dedicated staff member and with no particular training
identified in the manual to serve as essentially the
gatekeeper to all the resources and services that are
available for victims of alleged assault, we think is
inadequate and will not -- will not perform the
preventative function. Despite the fact that the plan
is well laid out in the manual, we just don't think
one person can do that.

With respect to intervention, and I'm
sure this is not a surprise and that you've heard
testimony on this from other folks, but the offenders
that contact us most repeatedly request, they complain
that they were very clear about their history as
victims and their vulnerabilities, but were
nonetheless denied an initial placement in protected
custody. And then they complained that once they were
victimized, despite repeated attempts and begging for
being placed in protective custody, in either
safekeeping or in add seg, which is not very desirable
housing. That's where, you know, inmates are locked
down 23 hours out of 24, and it's reserved for -- it's
punitive for many offenders. But many of the folks
that we are -- we received correspondence from have
repeatedly asked for either, but are denied based on
criteria that are never spelled out, to the extend
that I've reviewed unit classification reports.
Finally, with respect to investigation, one of the things that concerned us in our review of the prison program manual is that, whereas there are some substance requirements and recommendations in the prevention and intervention section, the investigation section is almost entirely procedural. It talks about who has to fill out which form within X period of time and provide to whom. But there is little substantive guidance given as to how an investigation into sexual assault should be completed and conducted.

A requirement, for example, to interview potential witnesses among either inmates or staff is not included. In fact, the threshold for assessing an inmate’s request for safekeeping is a thorough investigation, but the threshold for investigating the actual allegation of sexual assault is just an adequate investigation.

And we recommend -- we are currently supporting some legislation that is pending in the Texas legislature right now, which would, among other things, establish an outside agency to review and investigate assaults. Which it is our belief that that is critical and that, in fact, only through the establishment and adequate empowerment and funding of such an outside agency will the functions that we just
reviewed in terms of prevention, investigation, classification, be managed such that the incidence of prison rape in Texas will be reduced.

Thank you.

CHAIRMAN WALTON: Thank you very much.

Ms. Winter.

MS. MARGARET WINTER: Yes. I'm Margaret Winter, the Associate Director of the National Prison Project of the ACLU.

And my office has investigated scores of prison rape complaints from around the country, but the majority of them from Texas. And through interviews with scores and dozens of prison rape victims and eyewitnesses to prison rape and through depositions and through review of thousands of internal investigative reports of prison rape complaints, we begin to see patterns emerge that would explain, at least in part, the extraordinarily high incidence of rape in Texas prisons.

In a nutshell, it strongly seems to emerge that the -- the chief problem is one of attitude, an attitude of denial. And that's why I think the work of this Commission is so tremendously important. Widespread public exposure of the problem is required because in many parts of the country, and