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
particularly in Texas, mere administrative awareness of the problem has been shown to be inadequate. TDCJ officials have known about this problem for a long time, and for quite a number of years they've had policies and procedures that are pretty good, better than in many other places of the country, but that knowledge has not been enough to change the prison culture. And it is going to take the kind of public revelations and public shame and public outcry that are provided by this Commission that is going to really finally bring about true change.

I think it's really worth remembering that it was as long ago as 1999, that the Honorable William -- Wayne William Justice, entered a decision in Ruiz versus Johnson, which was a class action by TDCJ prisoners. The Ruiz court found that Texas prisoners, quote, live in fear. A fear that is incomprehensible to most of the state's free world citizens. More vulnerable inmates are raped, beaten, owned and sold by more powerful ones. Despite their pleas to prison officials, they are often refused protection. Instead, they pay for protection in money, services or sex.

Two years later, more than two and a
half years, later essentially nothing had changed.
The district court entered additional findings, saying -- finding that the institutional resistance to resolving serious safety problems pervades the system and that prison officials deliberately resist providing reasonable safety to inmates. The result is that individual prisoners who seek protection from their attackers are either not believed, disregarded, or told that there is a lack of evidence to support action by the prison system.

One might have hoped that these stunning findings, not once but, essentially, three times, over a period of as many years by a Federal court would have produced an upheaval and far reaching reform within the system. But, unfortunately, that wasn't the case. Although TDCJ did institute the Safe Prisons Program, the culture of tolerating prison rape continued virtually unchanged.

The court later entered an order requiring TDCJ to keep all kinds of statistics and to take reasonable steps to ensure that prisoners were housed safely. And the court specifically said that these requirements did not mandate any change from TDCJ's existing policies. It said that its detailed orders required the defendants to do more than act in
accord with their own written policies and procedures. Yet, prison officials continued -- and some may continue to this day for all I know -- to play a game of willing disbelief, to continue to insist that rape is not a major problem and that it occurs only as sporadic, isolated, unforeseeable aberrations from the norm. While, in fact, as too many TDCJ prisoners know, predatory gangs are continuing to routinely force sex on those who are not powerful enough to resist.

The ACLU continued to receive desperate pleas for help from vulnerable prisoners, especially those who were young, nonviolent, effeminate, or mentally ill. And these prisoners gave us consistent credible accounts of being enslaved by prison gangs and forced into prostitution. And we had documents showing that prison officials repeatedly ignored their pleas for protection, either on the grounds that the prisoners couldn't present conclusive evidence of victimization, or on the ground that in seeking protection the prisoner was probably merely trying to manipulate the system.

We found that there was -- were a number of reasons for this strong disconnect between TDCJ's written policy and the actual practice. For
example, after Ruiz, TDCJ commissioned excellent training materials for the Safe Prisons Program on preventing and responding to prison rape. But these materials contradicted deeply-ingrained attitudes and practices at the prison, and there seems to have been no pressure from the top down to insist that prison staff actually learn and absorb this material. We deposed prison officials from lowest line staff to the highest level, you know, to wardens, and found that although they knew that they'd -- yeah, they'd seen a video, they'd read some materials, they could not remember anything about it. And when cited basic propositions, some of which are -- that Lisa Graybill just read to you in an earlier version, they would contradict them. They would say, well, absolutely not. You know, that's not the way we run things here. They were totally unfamiliar.

The old ways that are so stubbornly resistant to modification are based on deeply-held prejudices and myths about prison rape, which are found in prisons around the country, but which seem to have a particularly strong foothold in Texas prisons. For example, prison officials very often view and misreport incidents of coerced sex as consensual sex. And this is partly because there is the ever-present
threat of violence and gang rape if prisoners do not oblige with demands for sex. And it's also because prisoners often have to enter into a protective partnership in order to get -- from being forced into prostitution, generalized prostitution.

After Ruiz, TDCJ's Safe Prison Programs, their materials, their policies and procedures, also paid lip service to the proposition that gay men are at heightened risk for sexual victimization. But in practice, TDCJ classification officers and prison officials and line staff continued to act on the deeply embedded view that gay or effeminate prisoners are asking for it.

Lisa Graybill has -- and others have alluded, I think, to the Prison Litigation Reform Act, and that has really been a major obstacle to confronting this problem, because it has forever barred countless prison rape victims from bringing civil suit against prison officials. Under the PRLA, prisoners can be raped and sexually assaulted and not have access to the range of remedies available to most civil rights plaintiffs for reasons that have been alluded to in earlier panels.

The grievance system is particularly an immense stumbling block. We came upon countless
cases, out of Texas and around the country, clearly
meritorious cases, horrific cases, where the plaintiff
was barred from seeking damages and where injunctive
relief had become moot because of a transfer, and
these cases never see the light of day. And it has a
great deal to do with the grievance system.

There was a question, I believe, from
Commissioner Fellner, from an earlier panel, about how
the grievance system works in TDCJ, and I am quite
familiar with it. And how it works is, a prisoner can
complain until they're blue in the face, from the
lowest line staff up to the warden, and that does not
constitute exhausting administrative remedies. By the
time they have any idea that they even should bring a
lawsuit, can bring a lawsuit, or that that would be a
form of relief, the time for filing a grievance has
long passed. It's two weeks. And so it's --
it's tragic, the cases that we saw.

The victims that were barred included
Garrett Cunningham, who I believe has been a witness
before this Commission. Garrett was raped by a prison
guard who had many young victims. At last -- and
Garrett's claim was mooted out through that exhaustion
process. At last, a later victim of this same guard,
a young man named Nathan, contacted the ACLU in time
for us to assist him in threading the needle of filing
an administrative complaint. Nathan also managed to
capture a sample of the guard's semen and sent it to
the FBI for DNA testing, and was then able to bring to
a successful conclusion a civil suit.

But few prisoners have those resources.

In 2005, the ACLU obtained, in litigation, thousands
of pages of TDCJ investigative reports, documenting
TDCJ officials' handling of prison rape complaints,
over an 18-month period, at a single prison, the
James V. Allred Unit. I would like to add to what has
been previously said in this panel about the
difficulty of statistic keeping problems. There is a
very -- there is a Draconian destruction of documents
policy in TDCJ. These reports of prison rapes,
complaints of prison rapes get destroyed very, very
quickly. But in examining the thousands that we did
manage to get over an 18 -- that covered an 18-month
period for one prison, what we found is that in case
after case, vulnerable prisoners who had been
threatened, beaten, coerced, or sexually abused were
denied protection on the ground that they could not
prove that they had been victimized. And no matter
what level of proof they were able to marshal, and I
won't go into the details now, there was always a --
there was always an excuse for avoiding it, to say
that the evidence presented was insufficient.

                      Short of a notarized document from
the -- from the assailant, and perhaps not even then,
nothing would have been sufficient. It was for lack
of credible evidence or suspicion of an attempt to
manipulate the system that TDCJ -- that was the
grounds in which TDCJ officials denied protection to
Roderick Johnson, whose lawsuit against the TDCJ went
to trial in the fall of 2005. And as in so many
cases, TDCJ officials claimed that Johnson had asked
for safekeeping in order to be housed with a
homosexual lover. What they ignored was that
Mr. Johnson had repeatedly begged not only for
safekeeping but for protective custody, which
Ms. Graybill has already pointed out is a very
unpleasant way to the housed. He said repeatedly,
lock me up and throw away the key. Just get me away
from these gangs.

                      The energy that TDCJ poured into trying
to discredit Roderick Johnson's claims of being
sexually abused were overwhelmingly greater than the
effort they made in protecting him. They made zero
effort to protect him. They sank an unbelievable
amount of resources into trying to discredit him.
There is a profoundly ingrained culture in TDCJ that prisoners who claim rape are trying to manipulate the system, and it's going to take a profound and sustained effort to change that attitude. And I believe that the work of this Commission is going to be a major step in finally changing that attitude.

CHAIRMAN WALTON: Thank you very much.

Thank you all for your testimony.

Mr. Austin, a couple of statistics I wanted to query you about. Because sometimes when statistics are cited, if there is no explanation given for those statistics, they can leave an impression that may be false.

You said that the greatest number of perpetrators were black men and the greatest number of victims were white men. And that would maybe suggest to some that black men have a greater predatory propensity for engaging in violent sexual behavior.

Let me just ask. What is the racial makeup of the -- as far as males are concerned that you looked at, of the prison facilities at issue? I mean, is there a disparity in the number of black males as compared to white males in the facilities?

DOCTOR JAMES AUSTIN: Yes.