that you might have.

THE CHAIRMAN: Thank you very much,

Mr. Dignam. They've asked me to pause for a
minute.

MR. DIGNAM: Okay.

THE CHAIRMAN: Mr. Rees.

MR. REES: Thank you. Good morning and
thanks for the opportunity to appear before you
today. I'm John Rees, Commissioner of corrections,
for the Kentucky Department of Corrections, and I
spent 38 years in the prison business, the vast
majority in administrative capacities in adult
prisons. So I believe that I'm both familiar with
and well-qualified to speak on this very serious
issue. I will try to be brief, but at the same
time address as thoroughly as possible this complex
issue. I think we need to look at it from two
separate perspectives, inmate on inmate acts and
staff on inmate acts. Additionally, we will need
to review how we investigate these events
internally and how we interface with outside law
enforcement and prosecutorial agencies.
Concerns about inmates being victimized are prevalent from the time of intake through their incarceration. Inmates within the Kentucky Department of Corrections receive at orientation oral and written information about sexual assault that covers prevention, self-protection, reporting of sexual assaults, treatment and counseling for sexual assaults.

Each inmate goes through a screening process at our assessment and classification center to determine if the inmate has any history of sexual abuse, victimization or sexual predatory behavior. Any inmate with a history of sexual assaultive behavior is then evaluated by mental health professionals. The inmate receives counseling and is closely monitored by staff. This also occurs for any inmate that is at risk for sexual victimization. We keep a weathered eye on those who may be a victim and those who may be a predator.

The department has an extensive policy that determines timeliness, staff actions, reaction
protocols for any report of sexual assault. If the complaint is of a serious criminal nature, then it will be referred to outside law enforcement, Kentucky State Police immediately. These cases, quite frankly, are pretty easily to handle from a corrections perspective. We've been doing this for a long time, as long as I've been in the business. What PREA has done is force us to keep better records and provide additional structure to the investigation, including training staff and evidence gathering and evidence preservation, as well as an overall sensitivity to the victim.

The real difficulty comes when we try to follow through on the prosecution of these cases. In the majority of instances, the victim is extremely reluctant to testify or even make a formal statement. When the victim is willing to testify, local prosecutors are generally not interested in spending time on cases of this type. Prosecutors often feel that unless there is a serious injury, then there's a strong possibility that the behavior was consensual and just the
relationship gone sour. If there is an injury and
the physical evidence is present, prosecutors worry
that they will be unable to get a conviction as the
jury will think the inmate just got what he or she
deserved.

To get some support for this view, all one has
to do is look back to the articles and comments
that were made regarding the recent death of Ken
Lay in regard to the alleged atrocities that he
avoided by dying and dodging prison. Many of the
comments were inappropriate, crude at a minimum,
and just helped to perpetuate the view of prison as
a world of "Grossburgers."

July 6th, 2006, the day after Ken Lay died
of a heart attack, the Washington Post published an
article by Henry Allen which described what many
thought should have happened to Ken Lay and
perpetuated the stereotype of what allegedly
happens in prison. The follow is an excerpt from
that article, and I quote, "Now that he has died of
a heart attack in the luxury of his Colorado
getaway while awaiting sentencing for his crimes,
none of his victims will be able to contemplate
that he is locked away in a place that makes the
Baltimore tunnel look like Hawaii, that he might be
spending long nights locked in a cell with a
panting tattooed monster named Sumo, a man of
strange and constant demands, that long days in the
prison laundry or jute milleor license plate
factory gibbering with anguish as a fire-eyed
psychopath stare at him for unblinking hours while
they sharpen spoons into jailhouse stilettos.

This type of stereotype undermines the hard
work that correctional professionals have done
across the country long before and since PREA came
into existence. Our experience in obtaining
successful prosecution, however, in this type of
case is extremely disappointing. Staff on inmate
acts are even more difficult to address. I doubt
that we will ever be able to successfully prosecute
these types of cases at the level we would like.

As with inmate on inmate acts, staff on inmate
acts need to be broken down into two types, forced
to coerced versus consensual or manipulative. I
know legally that there is no such thing as consensual sex between staff and inmate, but for this discussion I will look at the behavior from two perspectives. The forced or coerced is by far the most infrequent and easier to garner support for prosecution, but prosecution is still extremely difficult. Let me share a case we had in my department a little over two years ago. I believe it is an excellent example of the difficulty and complexity of the issue and as well is how we report these incidents with regard to PREA reporting requirements.

We had an inmate come to a staff upon transfer to a new institution and make a complaint that he had been forcibly raped by a correctional officer at a preceding institution. There was no physical evidence and he stated as it happened months before. He stated that he was afraid to say anything while he was at the same institution as the officer. This is unfortunate, but somewhat understandable.

We began an official investigation and set the
inmate up for a polygraph. He passed and our internal investigation, along with the state police, continued their investigation and determined that it was possible that the officer had the opportunity to commit the act. He was working on the day in question, the inmate was in the area, and there was a chance that they could have been alone together. In other words, the event could have taken place.

With this information in place, the officer was confronted and, of course, denied the accusation. He did, however, agree to take a polygraph. Had he not agreed to take the polygraph, the investigation would have stopped and the case would have been closed at that point. Instead, he took it and failed. We immediately started the termination process. I was prepared to fire him on the evidence that we had because I believed, and still believe to this day, that he is guilty of the acts that he was accused of. I did realize that had I fired him on that evidence that we had, I would have probably lost if he had
appealed it before his termination before the Merit Board. The State Police and our investigator presented the case to the local prosecutor and he had absolutely no interest in pursuing it at all. It was an inmate's word against an officer and he felt that the Grand Jury would not believe the inmate.

We were able to work with the officer's attorney and work out an agreement to have the officer resign rather than be terminated. We achieved partial success in this case as the officer was out of the institution and no longer worked for the Department of Corrections, but he wasn't necessarily out of the business. There's nothing official in his record, and unless another agency talks to the right person, he may be working again today in a position of authority. The problem I have from a PREA standpoint is how do you count it? How do we communicate it? How do we keep him from working again in the field?

Now let's focus on the most frequent type of sexual conduct between staff and inmate, either
consensual or manipulative. This, in my opinion, is the most serious aspect of the issue that we face today. It is a direct threat to the safety and security of our businesses. And based on the recent events in Tennessee and Florida, it can become deadly.

As we know legally there's no such thing as consensual sex between staff and inmates. Nevertheless, through manipulation or normal relationships it happens. When it does, it must be investigated, staff terminated, and prosecution must occur for the misconduct. We have made progress on these types of cases, but we still have a long way to go. This type of behavior in Kentucky is still a misdemeanor. We have had some success in official misconduct prosecutions recently. And we have a trial scheduled in September on a third degree sexual abuse.

According to the 2004 Bureau of Justice statistics special report, and I realize that the new figures are out as of Sunday, 42 percent of the allegations of sexual violence involve staff
misconduct. And 69 percent of the victims, as the
Bureau's representative recently stated, were male
and 67 percent of the perpetrators were female. In
state prisons 29 percent of the reports of staff
misconduct were substantiated and 90 percent of the
perpetrators of staff misconduct were referred for
termination or prosecution; however, there is no
information as to the number that were successfully
prosecuted. And I dare say it was dismally low.

I can remember the days when civil service
boards didn't even think it was reasonable to fire
someone for having a relationship with an inmate.
Thankfully, this is not the case today. But we
still have difficulty prosecuting these
individuals. And when we do successfully
prosecute, as the young lady mentioned earlier
today, we have problems with judges not seeing the
serious nature of the offense and giving sentences
that have no deterring effect.

Staff misconduct has been an issue that we
have tried to address through our legislature since
the 2005 session. While some legislation has been
passed regarding juveniles, we have not been successful in obtaining a law to allow us to prosecute staff for sexual misconduct as a felony.

For several years, Kentucky has been one of the few states that did not have felony law for sexual misconduct. We will continue this effort and present legislation in January for the third year in a row. Hopefully, we will be successful.

While the public perception of prison is often the image of tattooed bench-pressing "Halk-Like" Men giving other inmates what they deserve, those of us in the field of corrections know and see the reality of prison rape. Its aftermath for its victims include physical and mental pain, fear, loss of identity and the system as a whole is one of the greatest threats of the security of our institutions. Thank you.

THE CHAIRMAN: Thank you very much, Mr. Rees.

Mr. Wall?

MR. WALL: Mr. Chairman and members of the Commission, I come before you as a career