(Brief recess.)

MR. CHAIRMAN: We have a couple of commissioners who will be coming back in.

PRESERVATION AND COLLECTION OF EVIDENCE

Our next panel will be addressing the issue of the collection and preservation of evidence in sexual abuse cases. If the two of you could please identify your yourselves.

MS. SWIENTON: Good afternoon. Anjali Swienton with the National Clearinghouse for Science, Technology, and Law at Stetson University and also SCiLaw-Forensics.

MS. HOLLAND: And my name is Leann Holland from Sparrow Hospital. I am a forensic nurse.

THE CHAIRMAN: We have two other witnesses? Okay. Why don't you sit on this side because I think we're going to start here and move from right to left. And could the two of you identify yourselves? I assume you're from the Detroit Police Department?

MR. KANE: Yes, sir.
THE CHAIRMAN: Okay. Thank you for showing up on such short notice.

OFFICER KANE: My name is Robert Kane. I'm a Detroit police officer. I work in the Sex Crimes Unit.

THE CHAIRMAN: Thank you.

SERGEANT BABCOCK: Good afternoon. I'm David Babcock. I'm a sergeant with the Crime Scene Services of the Forensic Service Section in the City of Detroit Police Department.

THE CHAIRMAN: Could you please stand and take the oath?

(Panel sworn.)

THE CHAIRMAN: Ms. Swienton.

MS. SWIENTON: Good afternoon again, Mr. Chairman and the Commission. I appreciate the opportunity to address you.

I should preference my comments by stating that unlike just about everyone else we've heard from today, I have no experience dealing with rape behind bars specifically. My background is in forensic DNA as an analyst, so that capacity I've
worked hundreds of cases where sexual assault was the alleged crime from jurisdictions all over our country. And in identifying biological evidence, the issues are very similar regardless of where the act occurred, although when we talk about assault that may have happened in an incarcerated situation, there are some issues that will be unique.

And I should probably make an apology right up front that my remarks are probably going to pose more questions on these issues than I will have answers to provide you because there are so many complicating issues when you look at sex assault beyond bars.

But, a little bit about DNA. With today's technology, unless somebody has an identical twin, we are at the point where we can fairly, accurately, uniquely identify individuals. It's become a very powerful tool at law enforcement's disposal for the crime laboratories to use and we are able to use this technology to identify those involved in crimes, but also to exclude those that
may be falsely accused and, as I'm sure we're all aware, to also exonerate those who may have been wrongfully convicted.

In cases of sexual assault where the perpetrator is unknown, DNA has proved to be of great assistance helping to identify recidivist offenders through Cold Heads on CODIS, which is our nation's national DNA database. Although unlike on CSI, which does not necessarily accurately portray what our nation's crime labs can and can't do. When you get a hit on CODIS, you don't automatically get a photograph of the perpetrator and their address and, you know, what they ordered for dinner the previous night. So, if they come up with one of those machines, I want to get one, but we've come a long way.

Even in cases where identity is not, perhaps, the main issue, for example, if a suspect admits to having sexual contact with a victim, but claims that the contact was consensual, or if a victim reports an assault, but then later recants for whatever reason, DNA may still be able to provide
value. In those instances, the presence of DNA may become less probative to merely identify the perpetrator, but may still be able to corroborate an initial claim of force or nonconsent if found in atypical places such as underneath the fingernails of a victim. This may help to substantiate a claim of indicating resistance or self-defense.

However, and this is probably the main thrust of my testimony this afternoon, as powerfully as a tool as it may be, DNA is useless to us if the evidence is never collected. We need one protocol for the collection of sexual assault evidence so that all relevant evidence is collected before there have been further unnecessary chances for contamination and loss.

Once all the evidence is identified, collected and preserved, we can then use this science to narrow the gap so that trials are no longer just the victim's word against the perpetrator's word. If it's properly identified, collected and preserved, the science of DNA can provide the necessary proof to substantiate victim stories.
And that's even more pressing when we're talking about a situation where some of the perpetrators may be those in authority.

Because of the vagility and sensitivity of DNA evidence, in the absence of sound collection protocols, we risk contaminating vital evidence either while or -- either before or while it is being checked.

Currently, if an inmate of either a jail or a prison reports a sexual assault, that inmate may be transported from one site to other another or to several other sites before that inmate is actually seen and examined. At all of these junctures, we are losing potential vital evidence.

Again, I told you that I may be posing questions and here's my first one. How sanitary are the areas in which these inmates are being examined? What opportunities for contamination exist from any other people they may come in contact along the way, including caregivers, employees and other inmates that may have access to common areas?
Following an initial treatment on site, these victims may then be further transported off site to a hospital for medical exams either by sane nurses or emergency room physicians. You're going to hear from a sain nurse this afternoon and that is the optimal situation where someone with specific training in identifying and collecting sexual assault evidence from a victim is available. But in the absence of a scene or in jurisdiction where scenes are not present, how well are those that perform rape exams trained in all aspects of the actual exam?

Although an emergency room physician may be trained to identify injury consistent with sexual assault, we all know that not every sexual assault results in outward signs of injury. How well may we be trained in evidence collection, packaging and preservation? How comfortable will a physician be if they are later called to testify about any of the processes? What additional issues may be involved if the victim was incarcerated during the time of assault as opposed to, on the outside, sex
assault? Will the exam be conducted with law enforcement present and, if so, will that affect how forthcoming or truthful the victim may be during the examination or interview process?

If a victim is unable to be adequately examined at the prison earlier in the process or closer to the time of the event, how much time are we talking about that would have elapsed between the time of the event, the reporting, and the eventual examination or collection of evidence? Could it be hours? Could it be days? Will this affect the ability to recover probative evidence and obtain usable DNA profiles to aid with the investigation? Almost certainly, yes, it would.

Because biological evidence breaks down over time, and current testing methods are sensitive, they still require a cut-off amount, a threshold amount, of starting biological material. This means that in order to be useful, it must be quickly identified, collected and properly preserved.

Where might be find relevant evidence of the
biological kind? We would certainly find it on a
victim if the person reported and was examined in a
timely manner. But there can also be very useful
biological evidence recovered from a bathroom, a
cell, any common area at the jail, and also on the
person of the suspect if that person is identified
and examined in time. We'd have to get to that
suspect before any evidence was either purposefully
washed away or inadvertently lost.

We know especially those on the outside that
have access to things like CSI are becoming more
educated about biological evidence. And suspects
have known to wear gloves and now condemns when
they perpetrate crimes so as not to leave portions
of themselves behind. However, with sexual assault
behind bars, these types of materials may not be
available to those that commit these crimes and,
hopefully, the amount of biological evidence that
is available for collection would still be present.

Immediate collection is critical since the
evidence is fungible and will further degree or be
hopelessly contaminated or lost if not collected
quickly. And this is especially exacerbated in somewhere like a prison where there is access to common areas in a high density of inmates.

In addition to quick collection of evidence, and this is perhaps a policy recommendation that the Commission could take under advisement, evidence collection teams, if possible, should be sought that are not necessarily on site or affiliated with the institution since oftentimes those that are accused of committing sex assault behind bars are employees or those in authority.

We must remember to always collect the evidence first and ask questions later. We have to collect the evidence as soon as possible. And the investigation, which we've heard several witnesses testify about earlier today, can take sometimes weeks or months. And that is just unfortunately where we are in today's resources. Nothing happens in 42 minutes like it happens on CSI. You may notice that's a recurring theme of my testimony. But if we collect the evidence first and later, through other investigatory stages, find out that
the claim was unfounded, further resources don't have to be wasted on testing the evidence. But if we don't collect it and later on the investigation bears fruit, we may never have the opportunity to corroborate those stories because there's simply nothing to test.

The evolution of DNA technology is at a point where we need a very, very small amount of biological material in order to get a full genetic profile to uniquely identify someone. Scientists even use the term "touch evidence," which means that all of you are leaving your DNA on the podium, as well as the rest of these witnesses in their chairs behind me. However, this sensitivity also presents a double-edge sword to the criminalist. Although we only need a small amount of DNA to get successful results or probative results, this also means that just a trace amount of DNA that may be inadvertently left by evidence collectors, caretakers, employees, family members or anyone else that had legal access to a scene, could contaminate the evidence and confound the
interpretation of any biological test results.

We know in sex assaults that we usually get a mixture of biological profiles. In almost every instance where sexual assault occurs, we would get genetic profiles of both the victim and the perpetrator. In a situation such as sex assault behind bars, that may be further confounded by small amounts of DNA again from anyone else in the area. However, the positive side of this is that on any evidence where we may find a mixture of both perpetrator and suspect, we can link the suspect to the victim and the victim to the suspect or one or both of the actors to a particular scene where, perhaps, an alleged assault occurred.

In addition to DNA, certainly other forensic evidence that may be helpful in identifying a perpetrator of an assault or in tying a victim or a perpetrator to a specific area should also be adequately collected. These can include hairs and fibers, latent prints, clothing, weapons, tool marks and, potentially, bite marks.

To ask shift gears for just a moment, I ask
another question. What would motivate an inmate to falsely claim they had been sexually assaulted? I'm sure we could all think of a few things, but in general, and most commonly, this allegation would either not be taken seriously or an exam may be begun or conducted, but with no resulting changes in behavior such that the person who claimed to have been assaulted was not taken out of the general population and merely by claiming they were assaulted may be subjecting themselves to further acts of retaliation.

A victim is a victim regardless of any prior acts or their situation at the current time that they report and, therefore, all claims of sexual assault must be given the benefit of the doubt and afford of due diligence. Steps must be taken to encourage those weary of reporting to come forward. And you've heard a lot of testimony along those lines already today. Incentives should be given in the way of support and protection to victims and repercussions must be levied on those that pray on the weak and defenseless, whether the attacker be
another inmate, an employee of the facility, or
someone in a position of power.

There used to be a time when it was not
illegal or was not a crime to be forced to engage
in sex with a spouse. There was no such thing as
spousal abuse. We didn't prosecute it. If you
were married to the abuser, you had no recourse.
However, we as a society have evolved beyond that
position and now advocate that every individual has
a right to consent or refuse to participate in
sexual acts. However, I know we all know that rape
is not an act of sex. It is an act of violence and
domination. In a lock down situation, it may have
even further meaning to publicly assert those in
positions of power as dominant or to leverage an
existing imbalance of power for personal gain.

Regardless of the attitude held by some,
perhaps, towards incarcerated individuals that they
may have diminished rights, if convicted of crimes,
any victim of a crime deserves to have their claims
investigated.

Some issues that may be unique to sexual
assault occurring behind bars, unlike stranger
sexual assault, victims of sexual assault in
incarcerated situations will usually know who their
attackers are. Even if they are unable or
unwilling to identify the attacker, since there is
a finite population of inmates, employees and
visitors, all persons with access to the victim
during the time frame the attack occurred can
usually be identified and required to give
elimination samples for comparison with any DNA
evidence obtained from the victim. Even though
suspects are limited, if, in fact, the suspect was
another inmate, they may already have submitted DNA
samples for inclusion in CODIS, depending on what
they were convicted of and what the laws in that
jurisdiction were.

In fact, I'm willing to go one step further
and suggest that to facilitate ease of identifying
those involved in such crimes, perhaps we should
require submission of samples of anyone working in
a facility to have DNA samples on file for
comparison or elimination, much like we do with
fingerprints. It may require a paradigm shift to require this, and it may come up against some resistance, I would imagine that it would, to require anyone, even if they weren't convicted of a CODIS qualifying offense, to submit a sample. And although it may increase our backlogs currently in the labs, and involve more time and money up front, ultimately we could be saving time, money and, more importantly, lives, especially if those whose samples are on file know that they're on file and could be quickly identified if they commit one of these types of crimes behind bars.

In addition, the sanitary conditions of areas where these types of attacks occur can complicate the interpretation and can lead to additional contamination. This needs to be factored in to any interpretation of results that labs may provide from DNA testing. And because DNA testing at the current time, and I'll qualify it there, is unable to tell us when DNA was deposited on an item, additional complications with interpretation of results may ensue because we know it's not unusual
to find DNA from persons who might have been at the
scene. Body swabs, for instance, are probative,
but how probative is evidence recovered from other
areas like the floor or the wall?

Lastly, even when a victim's story says there
was no crime, the evidence may be able to counter
this. A trained sain nurse may be able to
recognize tears or signs of a struggle, resistance
or force even if the victim refuses to admit. All
members of the investigation and caregiver team
must consider the totality of the evidence to piece
together what actually happened, identify who is
responsible, hold them accountable and provide
follow-up care for all victims.

Thank you.

THE CHAIRMAN: Thank you.

MS. HOLLAND: Good afternoon, everybody.

Thank you for the honor of speaking here. And I
want to take a moment and kind of step back. We're
talking about rape, but I wanted to take a moment
and step back. Sexual assault nurse examiner is
one of the certifications that I have, and I wanted