basis. Something was stolen from me that I cannot get back, and I speak out today to prevent other young people from going through this.

And the only last thing I would like to say is that we know prison is a form of punishment, but must it be cruel and unusual?

Thank you.

CHAIRMAN WALTON: Thank you very much. Questions?

COMMISSIONER SMITH: One of the things -- and this is actually -- good morning, first. And thank both of you for your testimony. While I know that it was difficult, it was very helpful and useful to us. One of the things that actually stood out in both of your testimony was the fear of reporting and the failure to report these incidents, and I understand the reasons why those reports didn't happen. But from the point of view of the Commission, what can we do, what kinds of things would you suggest in order to make it safer for people to report and what kinds of mechanisms should be in place for youth to report? Either one of you.

MS. HARDIN: Well, I think one of the biggest fears of reporting, you know, attacks, or anything against like a guard -- on the guard, then I'll talk about the inmate level. On the guard level, I mean, who will you be reporting to? Another guard. And we, you know, they stick together; they're not going to stick their neck out and, you
know, defend an inmate or so-called criminal. I mean, one
of the things I would suggest that you could put in place is
like some type of autonomous committee or counseling or
person who actually talks and engages with the other inmates
to make sure nothing, you know, inappropriate is going down.

And on inmate level, nothing is a secret in
prison, nothing. Not what you do, not what you eat, not who
you see on the VI floor, nothing. So, last thing, like I
said in my testimony, is you want to be a snitch, I mean,
there's no form of secrecy, I mean, and also, again, you're
reporting it to a guard. And, look, guards, as much as they
get training, as much as they're supposed to be there to
protect and secure safety, they're also human, and they fall
-- they fall subject to, like, human characteristics and,
you know, if you piss a guard off and you get on his or her
bad side, they're going to retaliate against you, and
sometimes that's, you know, telling other inmates that, you
know, you're snitching and you're reporting things. And
also in the manner that they approach you when you do a
report it's obvious that you've made a report, so, it's not
like you could kind of like get around it or hide that you
made this report. So, to feel retaliation from both sides
is very real, and that's why personally I did not report
what was going on.

COMMISSIONER SMITH: Ms. Hall-Martinez, I can
rephrase it, I can say it again.

MS. HALL-MARTINEZ: Okay. Great.

COMMISSIONER SMITH: The question was, what can we -- the short version is what can we do in order to encourage reporting and what kinds of mechanisms would help make your reporting better?

MS. PASION: Well, in Hawaii, back in Hawaii, there -- the process of a grievance is like I guess what you might call corrupt, because one of, like a couple of times I filed grievances but then I haven't received response back immediately.

COMMISSIONER SMITH: What would be the most effective way, then, to file a grievance? I mean, how ---

MS. PASION: To report it like to someone who's much more trustworthy than the guards, like, you know, I guess counselors or the staff members. I mean, not staff members, but then the doctors or the nurses in the facility.

CHAIRMAN WALTON: Was there any type of orientation provided to you that told you a process by which you could make reports?

MS. PASION: Yes, there is, but then it's corrupt, I guess, like the process was like slow, I guess.

MS. HARDIN: Yeah, they gave me orientation that, you know, was a step-by-step of where things were at and what to do, but, again, you know, this is -- this is --
especially at Bedford, this is prison, and, you know, and I thought I was going to be there for the long haul, so, I didn't want to ruffle anybody's feathers. And at Riker's Island, I mean, reporting a grievance really is a joke, I mean, to be, seriously, it's not like, you know, you put a grievance and the guard is immediately removed and everything is okay. So, you know, I mean, the only thing you can do -- I think I'm talking too loud.

CHAIRMAN WALTON: No, no.

MS. HARDIN: I mean, the only thing you can do is the DET who is like the highest officer, and depending if you know the DET, you might can reach out to her and she might get you moved to another facility, but, at the same time, especially with Riker's Island, it's an adolescent facility. When I was there in the nineties there was only six upper and six main, six main was for -- it's adolescent in protective custody and six upper was for everybody else going back and forth to court or waiting to go upstate. So, even if they got you moved, there wasn't too many other places you can go on the island, and when you did recreational, when you went to the mess hall, you was going to see that other inmate, you know, and bound to see the other guards.

CHAIRMAN WALTON: Other questions?

COMMISSIONER STRUCKMAN-JOHNSON: First of all, to
both of you, I'm very sorry for what's happened, it's
terrible, and it's just -- I -- anyway, could you tell us
for each, in each of your cases, who finally helped you?
Who were you able to go to and have -- who responded in a
way that gave some relief and some help to start the process
that brought you here today?

MS. HARDIN: With regards to me being an
adolescent at Bedford Hills, the other part to that story
that kind of was in my testimony is that after I kissed the
woman ---

CHAIRMAN WALTON: It's not you, it's the system.
I don't know what's going on.

MS. HARDIN: Apparently no system likes me.
(Laughter.)

So, the other part to that is that I had been
carrying, you know, for lack of a better word, a shank,
which was only a piece of plastic with some tape around it,
so, it really wasn't that -- for my protection, because I
had knew what was going down, you know, I knew that she
wanted to attack me, I knew -- I knew what was playing out,
and plus I was scared of like other retaliation from like
other inmates. So, after I got my clothes on and we was out
in the corridor, I told her that if she ever tried that
again I will killer, know what I'm saying, and she swung on
me and I kind of ducked up under that and a lot of commotion
went on, and what ended up happening, I ended up pulling the
shank out to protect myself and she actually ended up
getting it and an officer got cut. And then all hell broke
loose. I mean, when an officer gets hurt in a facility,
they shut it down, know what I'm saying, so, you know, the,
what we call the turtles and the boom squad came in with
full gear and the riot gear and so on and so forth and shut
us down, and by that time my Grandmother had went and got my
like birth certificate, my baptism record, she had talked to the
church, other elected officials in my neighborhood and
where I came from in Brooklyn and was moving with the
process to try to get me out. So, my sentence got -- got
voided out and I got released.

As to like Riker's Island, I mean, I was released
just because I was, you know, and back and forth with the
judge, so, I was released. But I think what ended up
happening to me is while I went in and out of prison is that
I became used to what happened, like the sister said, you
know, I kind of became numb to what was going on in and out
of prison, so, it didn't really bother me too much, and plus
I'd gotten a lot bigger. And, you know, whatever you do in
prison, you know, goes with you, so, after that first
incident, you know, happened with the older woman at Bedford
Hills, I didn't really have any trouble with any other
inmates.
MS. PASION: Who helped me was Dr. Bidwell and the ACLU of Hawaii, after I was released.

COMMISSIONER STRUCKMAN-JOHNSON: After. After.

Okay. So, you did receive -- and when did you decide to come forward about realizing your activism?

MS. HARDIN: I got introduced -- actually, right after I got out of jail, I got introduced to this organization called the Orchard Law Project which organizes with LGBTSEQ, Lesbian, Gay, Bisexual, Transgender, Gender Non-Conforming Folks of Color, in Brooklyn, New York, and it started -- it started to give me the vocabulary and the ways to articulate everything I was feeling. So, you know, to be honest with you, you know, they were paying money and I didn't have to flip a burger for it, so, I was with it. And after that, I kind of got wind of Prison Moratorium Project, and that's exactly when the Justice for Youth Coalition was just forming. So, you know, being involved in these campaigns and like this, you know, these different non-profits, I've actually got to travel across the country to express my personal experiences inside prison and also develop my analysis of what -- around what we call the prison industrial complex. And I also got to travel to Nigeria to the International Conference on Penal Abolition and talk about my experiences in the States and what was happening here. So, that was kind of like what helped me
and how I got into it. I was just looking for a job, kind of tripped in it, luckily I'm here now.

COMMISSIONER STRUCKMAN-JOHNSON: Well, I just think it has -- who can -- who can come out and tell after it's over, who can come speak, and I don't think people are speaking, particularly what happens in juvenile, I think it's a great, great silence, so, we are -- we are indebted to your -- to your voice today.

MS. HARDIN: Thank you.

COMMISSIONER STRUCKMAN-JOHNSON: What do you think about -- I'm just trying to think in terms of recommendations -- who can -- it sounds to me like somebody has to be there almost around the clock who is not in a security position. What about it, is there some idea of like a -- like a house mother, house father, some independent person who -- who is present there to just quell anything, to stop the verbal harassment, to -- I mean, rules have to be set, but somebody there who's truly an advocate, or at least neutral, does that -- I mean, does that sound possible? Does that concept sound like it might work in an adolescent facility?

MS. PASION: More access to counsel, you know, the counseling, I guess in Hawaii, well, they were, but then actually I -- I was just like, you know, didn't like to talk about anything, I was just, you know, scared.
MS. HARDIN: I think like a house mother or a house father, you know, someone that, whatever their title or position might be, but someone who has nothing to gain or lose by protecting these young people.

COMMISSIONER STRUCKMAN-JOHNSON: Right.

MS. HARDIN: And I think just like a fail-safe to the house mother or house father would be someone who just goes into a facility and inspects what's going on, talks to the guards as well as like the inmates who are willing to talk. It has to be, you know. And then I guess also, too, just recognizing that you are going to have segments of the population with special needs. Far too often we try to catch the problems on the back end. I think it would behoove the Commission to try to solve this problem on the front end before it becomes a serious problem and all of these like ill things that happened to me and the sister over here, you know. So, I mean, putting a house mother or house father in and then someone else to come in just to see what's going on in the facility to make sure everything is running accordingly, and just understanding that we're going to have special needs. I mean, you know, this is 2006, I'm -- you know, everybody doesn't fit into the male/female category and we need to recognize that population because it's ever growing and especially for queer young people, they get it the worst on both ends, from the guards and also
from the inmates. So, my next recommendation also to the Committee would be some type of training for the guards around these special needs population so they know how to interact with them and the things to say to them on an everyday level, like calling somebody a transvestite is not the best thing in the world, or dyke, you know, doesn't give me cheerful cheers in the morning to be called a dyke, know what I'm saying?

COMMISSIONER STRUCKMAN-JOHNSON: All right. Well, thank you.

COMMISSIONER SMITH: I guess one of the things is that your testimony has raised a bunch of different issues one related to solitary confinement, medical and mental health issues for people who are victims, the advisability of dormitory-style housing, so, that's sort of a facility question, you know, the slowness of the response, housing, things like that. There were also two other issues that came up. One -- and I'm hoping that some of the witnesses later can talk about this -- one was related to cross-gender supervision, right? Supervision of girls in custody by male staff, which I would like people to talk about. I'm hoping that the experts will talk about that when we talk about standards and sort of what -- what's permitted in juvenile settings. I know that that issue is contested in the adult setting.
Another issue that you raised was the issue of consent. I believe Chino, Ms. Hardin, you mentioned people having consensual sex in these settings. Can you talk about that a little bit, particularly given that all sex in juvenile facilities is prohibited?

MS. HARDIN: Yeah. Well, all sex in every facility is prohibited.

COMMISSIONER SMITH: Well, we're just talking about juveniles here right now.

MS. HARDIN: Yeah, so, the, you know, I mean, the lockdown, and the only time they see each other is through like rec. or the mess hall or what not, and the guards would let the boys who had girlfriends on the girls' side come into the cells and have consensual sex. Now, mind you, these are very young kids, you know. I was 13, so, some of them were like 13 or 14, you know, I think there was like a 12-year-old there. So, yeah, I mean, consensual, I wouldn't necessarily call it consensual, but sex that wasn't being contested was happening between juveniles in Spofford Correctional Facility. Yeah. And I think what would have been actually better is, you know, like if we have the foresight to understand that while you're adolescent in a juvenile facility that you need school, you also need all the other things that come into play with coming to, you know, know your body and growing up, so, there should have
been some type of like sexual educational class in the facility so to, you know, no one with sex ed. through the consequences of sex, like STDs, HIV, pregnancy, so on and so forth, and also the mental capacity of having a sexual encounter at a very young age. There is a lot of young women in the facility who had STDs, you know, things like crabs, chlamydia, syphilis. Now, imagine being like 13, 14 years old, I mean, you're barely learning how your body's working, let alone you're going to have to deal with this disease. So, you know, that would be like a recommendation from me, you know, to like have that type of class, or incorporate it into like the school. It doesn't have to be an all-day, every-day thing, but just so they have some type of awareness, some type of pamphlet that, or you could even have other organizations come into the facility to teach that type of things.

COMMISSIONER SMITH: So, the issue of consent is being contested because I think that your point is that it's not clear whether there was consent, whether people had enough information to be able to really be engaging in consensual interactions.

MS. HARDIN: Yes. And there are so many social coercions that play out in a juvenile facility. You know, a girl wants to be liked, you know, or whatever, whatever the case might be -- I can give a lot of examples -- you know,
that plays out, and they do that. Or, you know, a boy who wants to look like a man, quote unquote, you know, is going to try to befriend a girl or even force himself on a young lady. So, definitely, that, the issue of consent is because of lack of information, and also, in my opinion, lack of mental capacity to make those decisions as of yet at the age of like 13 or 14.

MS. PASION: Back in Hawaii, I was sent to the boys' side but I was inside the short term facility while there were also a secured custody facility for the long term boys, so...

COMMISSIONER SMITH: Can you talk a little bit about the issue of cross-sex supervision, right? You know, girls being supervised by men, boys being supervised by women. It also sounds like that happened in the showers and where people were nude. Is that accurate?

MS. HARDIN: Yes. In the adolescent house, I mean, they had to watch the women take a shower, and it would play out two ways: either the guard would actually physically come in the shower facility which had a, like three-foot stalls separated by walls but no shower curtain, and then a door that would lock. So, either he will come in and that door would lock behind him, or he will just stand in the corridor. The guards that were half-way decent would stand in the corridor and not really look at you, just make
sure you weren't hurting nobody in the facility, in the shower. The guards who were obviously not decent would come in and lock the door behind them. So, yeah, I mean, that is a huge issue of -- of being a woman and having male guards look at you in a way that's not for safety. And, you know, just even in the intake, in the intake, you know, when you have to, you know, bend over and squat and stuff like that, like all these like crazy positions that you have to go through, male guards are present and watching you do that.

Even in the intake facility when you have to see the GYN, which is a very intrusive procedure for the women, I'm pretty sure you know, having a male guard watch that is almost outrageous. I mean, I couldn't for the life of me figure out what would be the problem of getting a female guard to, you know, stand there and watch that, you know, play out. But, you know, they had male guards. It's -- in Riker's Island, when I was there, there was a lot of male guards and not as much female guards, but there were a few female guards.

CHAIRMAN WALTON: Any other questions? Okay.

Yes.

MS. PASION: To me, I think it's better to have like I guess on the girls' and boys' side, the girls' side has all female staff and then the boys' side gets all males.

COMMISSIONER STRUCKMAN-JOHNSON: You think that's
better?

MS. PASION: Yeah. And I think it's better if transgender won't be -- any transgender would be -- belong in the boys' side, I guess, you know, with the girls.

CHAIRMAN WALTON: Well, thank you. I'm sorry.

COMMISSIONER SMITH: I guess another issue, Judge Walton, that we didn't discuss, which, again, you raised, both of you raised, is sort of the inappropriate placement of people, you know, which I don't even know if we can -- we can address, because all those issues around supervision, I mean, for example, sort of the issues -- I want to respond to your question, your comment, Ms. Pasion -- I think that for employment law reasons that it's very difficult to prohibit, to have a situation where all male and all female work in those facilities, but certainly many are thinking that in sensitive positions where nudity is involved that there should be same gender staff. But I wonder how that issue plays out in the situation of people who are transgendered.

MS. HARDIN: It's a very interesting questions.

COMMISSIONER SMITH: And I would really appreciate your thinking about that and providing some recommendations to us on that.

MS. HARDIN: Well, I think it all -- I think -- I would think it begins mostly -- I wouldn't know exactly how
that would play out with transgender folks because I would imagine -- this is my opinion -- I would imagine a transgender woman would much more prefer to be in the female side rather than a male; but at the same token, a transgender male, I wouldn't think he necessarily would want to be on the male side because he would still be targeted because, you know, they would say things like, I would imagine, "You're still a woman, let's see how much woman you are," and that would play out. But I think, you know, with the guards, I would, you know, of course, I know there's like different laws that, you know, can't have all males here, all females there, I don't know exactly how it plays out, but I know there's laws like that, right? Discrimination laws. Again, my suggestion would be the training and, you know, some type of like evaluation of guards, you know, and how they're doing, how their job performance and what they're doing. I think a guard who's got like six write-ups or even one write-up or two write-ups from female or male inmates regarding like sexual harassment or attacks or allegations, that should be taken very seriously and looked into. Regarding transgender and guards watching them, again, that's all with the training; they need training around those sensitive issues, so if you get a transgender woman who might be before she's had her complete surgery, you know, you won't be gawking and making fun of
her new body or a transgender male and his new body. So, we just need sensitivity training around those different issues, and when allegations or cases of violence or assault arise, just to be taken serious so the guards know, look, you know, I'm not gonna do this because I don't want to put my job in jeopardy, what I'm saying, or I might just end up on the other side of the fence.

MS. PASION: Back in Hawaii, transgenders, it's usually rare to have a transgender enter in the facilities, probably, like, you know, once in a blue moon or something, because I was the -- I think I was the last transgender female to enter in the facility.

MS. HARDIN: And a note also in New York City on Riker's Island we used to have a gay housing unit, but Marty Horne has taken that out. I think the Commission should look into that, how gay housing unit plays out, and the pros and cons of a gay housing unit.

COMMISSIONER STRUCKMAN-JOHNSON: Could you tell me what you think the pros and cons are?

MS. HARDIN: The pro, I would think you'll be -- you're in a population who are more like you or identifies like you, so, comfortability levels are there, and, you know, the risk of sexual assault I think is lower, you know, in a gay housing unit. But on the flip side of that, a con might be being in a gay housing unit you're probably more
targeted, you know, for -- for being queer by other inmates, because just because you live in a gay housing unit does not mean you don't eat or have rec. with other inmates. It's not completely segregated like that. But there are folks in New York City who -- one organization, the Civilian Law Project, might be good for the Commission to contact who's actually trying to get Marty Horne to make sure that the gay housing unit is -- I don't know if it's closed, but either opened or reopened on Riker's Island Correctional Facility.

COMMISSIONER STRUCKMAN-JOHNSON: So, they're moving to -- there's movement to reopen it.

MS. HARDIN: Yes.

COMMISSIONER STRUCKMAN-JOHNSON: Thank you.

CHAIRMAN WALTON: Thank you very much for your testimony, and if there are other things that you didn't think of today that you would like to communicate to us, please do that, because we would like to hear that so we can consider that information. I think, obviously, one of the big issues that the nation has to constantly confront is, when it comes to youth, is who we lock up and what type of facilities we put them in, and I think if we make the right decisions at that point, that in and of itself I think would have an impact on the incidence of sexual assault of juveniles in detention facilities. So, thank you very much.

MS. HARDIN: Thank you.
MS. PASION: Thank you.

CHAIRMAN WALTON: We'll take a ten-minute break.

(Recess.)

CHAIRMAN WALTON: Good morning to our first panel. Your reputations precede you. We welcome all of you; we're happy to have your presence on this panel.

We have Mr. J. Robert Flores who is the Administrator of the Office of Juvenile Justice and Delinquency Prevention in the Office of Justice Programs in the United States Department of Justice.

Our second witness will be Ms. Gwendolyn Chung who is President of the American Correctional Association.

Our third witness will be Mr. Howard Beyer, who is President of the Council of Juvenile Corrections Administrators.

Our fourth witness will be Mr. Leonard Dixon, President of the National Juvenile Detention Association.

And our final witness will be Mr. Mark Soler, who is Executive Director of the Center for Children's Law & Policy.

Again, thank all of you for your presence. If you'll stand and take the oath, we'll have your testimony.

(Panel Sworn)

CHAIRMAN WALTON: Thank you. Mr. Flores.

MR. FLORES: Thank you, Mr. Chairman, members of