

U.S. COMMISSION ON CIVIL RIGHTS

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PUBLIC BRIEFING

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WOMEN IN PRISONS: SEEKING JUSTICE BEHIND BARS

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FRIDAY, FEBRUARY 22, 2019

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The Commission convened in Suite 1150
at 1331 Pennsylvania Avenue, Northwest, Washington,
D.C. at 9:00 a.m., Catherine Lhamon, Chair,
presiding.

PRESENT:

CATHERINE E. LHAMON, Chair

PATRICIA TIMMONS-GOODSON, Vice Chair

DEBO P. ADEGBILE, Commissioner

GAIL HERIOT, Commissioner

PETER N. KIRSANOW, Commissioner

DAVID KLADNEY, Commissioner

KAREN K. NARASAKI, Commissioner

MICHAEL YAKI, Commissioner

MAURO MORALES, Staff Director

MAUREEN RUDOLPH, General Counsel

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

PANELISTS PRESENT:

JULIE ABBATE, National Advocacy Director, Just
Detention International

LEANN K. BERTSCH, Director of Corrections and
Rehabilitation, North Dakota Department of
Corrections

SUSAN BURTON, Founder, A New Way of Life Reentry
Project

BRETT DIGNAM, Vice Dean of Experiential Education
and Clinical Professor of Law, Columbia Law
School

BETSY GINSBERG, Clinical Associate Professor of Law
and Director of the Civil Rights Clinic,
Cardozo School of Law

ALIX M. McLEAREN, National Administrator, Women and
Special Population Branch, Federal Bureau of
Prisons

JAIMIE MEYER, Assistant Professor of Medicine and
Assistant Clinical Professor of Nursing, Yale
University School of Medicine

EMILY MOONEY, Criminal Justice Policy Associate, R
Street Institute

ANDIE MOSS, Founder, The Moss Group

BRENDA P. MURRAY, Co-Chair, Women in Prison

Committee, National Association of Women
Judges

BECKI NEY, Principal, The Center for Effective
Public Policy

KAITLIN OWENS, Policy Analyst, The American
Conservative Union

JESSICA PUPOVAC, Freelance Reporter

JUDITH RESNIK, Arthur Liman Professor of Law, Yale
Law School

EMILY J.SALISBURY, Associate Professor of Criminal
Justice, University of Nevada, Las Vegas

BRENDA V. SMITH, Professor of Law, Senior Associate
Dean, American University Washington College
of Law, Former Commissioner, National Prison
Rape Commission, Director, Project on
Addressing Prison Rape

WENDY STILL, Chief Probation Officer, Alameda
County

Probation Department

CAROLYN SUFRIN, Assistant Professor of Gynecology
and Obstetrics, Johns Hopkins Medicine

LASHONIA THOMPSON-EL, Executive Director, W.I.R.E.
(Women Involved in Reentry Efforts)

NEAL R. GROSS

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WASHINGTON, D.C. 20005-3701

WENDY WILLIAMS, Deputy Commissioner of Women's
Services, Alabama Department of Corrections

PAMELA WINN, Founder and Executive Director,

Restore HER

STAFF PRESENT:

TERESA ADAMS

LASHONDA BRENSON

KATHERINE CULLITON-GONZALEZ

PAMELA DUNSTON, Chief, ASCD

YOURSAL ELKHAITA

ALFREDA GREENE

TINALOUISE MARTIN, OM

WARREN ORR

SARALE SEWELL

JUANDA SMITH

BRIAN WALCH

MARIK XAVIER-BRIER

MICHELE YORKMAN

COMMISSIONER ASSISTANTS PRESENT:

SHERYL COZART

ALEC DUELL

JASON LAGRIA

CARISSA MULDER

AMY ROYCE

RUKKU SINGLA

ALISON SOMIN

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P R O C E E D I N G S

(9:00 a.m.)

CHAIR LHAMON: Okay, this briefing of the U.S. Commission on Civil Rights comes to order at 9:00 a.m. Eastern time on February 22nd, 2019, and takes place at the Commission headquarters on 1331 Pennsylvania Avenue, Northwest, Suite 1150, Washington D.C. 20425.

I'm Chair Catherine Lhamon and Commissioners present at this briefing in addition to me are the Vice Chair, Patricia Timmons-Goodson, Commissioner Adegbile, Commissioner Heriot, Commissioner Kirsanow, Commissioner Kladney, Commissioner Narasaki, and Commissioner Yaki.

A quorum of Commissioners is present. Will the court reporter confirm for the record that you are present?

COURT REPORTER: I am here.

CHAIR LHAMON: Thank you. Mr. Staff Director, will you confirm for the record that you are present?

MR. MORALES: I am present.

CHAIR LHAMON: Thank you. I welcome everyone to our briefing on Women in Prison Seeking

1 Justice Behind Bars. In today's briefing, the
2 Commission examines through a civil rights lens the
3 experience and condition of confinement for women
4 in prison.

5 The topics we examine include access to
6 care for women's medical needs, the deprivation of
7 which may violate the constitutional requirement to
8 provide adequate medical care for all prisoners,
9 implementation of the Prison Rape Elimination Act,
10 and other efforts to prevent sexual violence
11 perpetrated on women in prison and the sufficiency
12 of programs to meet women's needs after release.

13 The Commission will examine the
14 consequences of discipline practices in women's
15 prisons and the impact on families when women are
16 placed far from home or parental rights are
17 terminated despite their caregiving role.

18 We will hear from women who have
19 experienced incarceration, state and federal
20 corrections officials, academic and legal experts,
21 and advocates.

22 Testimony from this briefing will form
23 an integral basis for the Commission's eventual
24 report to the President, Congress and the American

1 people, in which we will offer recommendations
2 regarding adequate safeguards for the civil rights
3 of incarcerated women.

4 Today's briefing features more than 20
5 distinguished speakers who will provide us with an
6 array of viewpoints, as well as the opportunity to
7 hear from the public.

8 Panel 1 will be a substantive overview
9 of our broad topic regarding women in prison,
10 examining statistics, constitutional protections,
11 classification, and family disruption. Panel 2
12 will analyze women's health, personal dignity and
13 sexual abuse in the U.S. prison system. Panel 3
14 will review treatment of women while incarcerated,
15 Panel 4 will examine rehabilitative opportunities
16 for women in prison and life after prison.

17 The day will conclude with an open
18 public comment session during which the Commission
19 will hear from members of the public who wish to
20 present additional information to the Commission.

21 I thank all who join us today to focus on this
22 critical topic.

23 Your views help us to fulfil our
24 mission to be the nation's eyes and ears on civil

1 rights. And I will now turn to Commissioner Dave
2 Kladney who leads this investigation for the
3 Commission.

4 COMMISSIONER KLADNEY: Thank you, Madam
5 Chair, and good morning, everyone. Thank you for
6 being here.

7 Justice Kennedy said when a prisoner is
8 taken away our attention turns to the next case.
9 When the door is locked against a prisoner we do
10 not think about what is behind it, and where we
11 enter the hidden world of punishment, we should not
12 be startled by what we see.

13 One day in prison is longer than any
14 day you and I have ever had to endure. Women in
15 prison face overarching issues which cause great
16 harm while they are incarcerated. These issues
17 continue to cause harm after they are released and
18 addressing these issues is not at the forefront of
19 government action or policies.

20 Today's briefing contextualizes many of
21 the issues facing women in prison in one place. I
22 hope this consolidation of issues will lead to
23 change in an archaic system of imprisonment which
24 succeeds in punishment but fails in the ability of

1 any meaningful rehabilitation which increases the
2 public safety.

3 Incarcerated women who have never
4 abused their kids have been taken away at higher
5 rates for the sole reason of being incarcerated
6 than parents who physically abuse their children.
7 Women have different needs than men. They require
8 annual physical examinations and screenings which
9 they don't receive and endangers their lives.

10 Basic fairness demands that they have
11 the same educational and vocational opportunities
12 that men do, but they do not. The most effective
13 policies for good public work would be to provide
14 programs which actually prepare these women for
15 financial and social success on the outside.

16 We must examine legal issues like
17 gender-specific staffing assignments consistent
18 with Title VII through the use of bona fide
19 occupational qualifications. We must also
20 investigate the level of medical care necessary to
21 fulfill Eighth Amendment requirements.

22 Doing time is difficult enough. It is
23 acknowledged by prison professionals that women are
24 traumatized to a much greater degree than men when

1 entering prison. They should not be further
2 traumatized, degraded, disciplined or assaulted
3 because of their gender.

4 We can and should protect the rights of
5 any citizen of the United States, whether they are
6 incarcerated or not.

7 I am proud the Commission is proceeding
8 with this briefing today and I would like to thank
9 former Commissioner Roberta Achtenberg for asking
10 me to co-sponsor this topic when she served on the
11 Commission.

12 I also wish to thank Amy Royce,
13 LaShonda Brenson, Kathy Culliton-Gonzalez,
14 Elizabeth Paukstis, Maureen Rudolph, Tina Louise
15 Martin, Pam Dunston, Brian Walsh, and Rukku Singla,
16 and our Staff Director Mauro Morales.

17 I also thank the witnesses who will
18 participate today in this very rarely discussed
19 topic. Many others made great contributions as
20 well. As you may have heard, we had a government
21 shutdown, but our staff managed to pull this event
22 together nonetheless. I greatly appreciate their
23 diligent dedication and hard work.

24 Thank you.

1 CHAIR LHAMON: Thank you, Commissioner
2 Kladney, and I echo your thanks to our staff and to
3 all present who have been able to come together in
4 these short weeks following the government
5 shutdown. It's incredibly important for all of us.

6 Now turning to some specifics for the
7 briefing, I caution all speakers, including our
8 Commissioners to refrain from speaking over each
9 other for ease of transcription and to allow for
10 sign language translation to my right.

11 For any individuals who may need to
12 view the sign language translation, there are seats
13 available in clear view. I ask everyone present to
14 please silence your phones and not to take flash
15 photos to minimize health risks to persons present.

16 And as I mentioned, after the four
17 panels and an afternoon break, we will reconvene at
18 5:00 p.m. for a public comment period. If you're
19 interested in participating in the public comment
20 period, during which each person will have up to
21 three minutes to present, we will be honored to
22 hear from you.

23 Total spots at the public comment
24 period are allotted on a first-come, first-served

1 basis. If you did not already sign up for one of
2 the first 15 spots online, you may sign up at the
3 registration desk now.

4 The spots will be available until
5 filled and if you are one of the individuals who
6 signed up online, please check in at the front desk
7 so we hold your spot.

8 For any member of the public who would
9 like to submit materials for our review, our public
10 record will remain open until Monday, March 25,
11 2019. Materials can be submitted be mail to the
12 U.S. Commission on Civil Rights, Office of Civil
13 Rights Evaluation, 1331 Pennsylvania Avenue,
14 Northwest, Suite 1150, Washington D.C., 20425, or
15 by email to womeninprison@usccr.gov.

16 During the briefing, each panelist will
17 have seven minutes to speak and after each panel
18 presentation, Commissioners will have the
19 opportunity to ask questions within the allotted
20 period of time and I will recognize Commissioners
21 who wish to speak. I will strictly
22 enforce the time allotments given to each panelist
23 to present his or her statement.

24 And unless you are the one person who

1 did not submit your testimony until today, you may
2 assume we have read your statement so you do not
3 need to use your time to read them to us as your
4 opening remarks and please focus your remarks on
5 the topic of our briefing.

6 I note we have a very tight schedule
7 because of the nearly two dozen experts we have
8 planning to present to us, so I ask my fellow
9 Commissioners to be cognizant of the interests of
10 each Commissioner to ask questions.

11 Please be brief in asking your
12 questions so we can move quickly and efficiently
13 through today's schedule. And I will step in to
14 move things along if necessary.

15 Given the topic that can come up with
16 regards to women in prison, I want to inform the
17 panelists and the public and remind my fellow
18 Commissioners that, since 1983 Congress has
19 prohibited the Commission from, quote, studying and
20 collecting or, quote, serving as a clearinghouse
21 for any information with respect to abortion.
22 Please tailor your remarks accordingly consistent
23 with this statutory restriction.

24 Panelists, please notice the system of

1 warning lights that we have set up. When the light
2 turns from green to yellow, that means two minutes
3 remain for your speaking time.

4 When the light turns red, panelists
5 should conclude your statements so you don't risk
6 my cutting you off mid-sentence, which I will do.
7 My fellow Commissioners and I will do our part to
8 keep our questions and comments concise.

9 **PANEL ONE: AN OVERVIEW OF WOMEN IN PRISON,**
10 **STATISTICS, CONSTITUTIONAL PROTECTIONS,**
11 **CLASSIFICATION, AND FAMILY DISRUPTION**

12 So now, with that, we turn to our first
13 panel, which is titled An Overview of Women in
14 Prison, Statistics, Constitutional Protections,
15 Classification and Family Disruption.

16 The order in which they will speak is
17 Dr. Alix McLearen, National Administrator of Women
18 and Special Population Branch, Federal Bureau of
19 Prisons, Kaitlin Owens, Policy Analyst at the
20 American Conservative Union, Dr. Emily J.
21 Salisbury, Associate Professor of Criminal Justice,
22 University of Nevada, Las Vegas. I understand you
23 traveled late last night, thank you for showing up
24 early this morning, West Coast time.

1 Emily Mooney, Criminal Justice Policy
2 Associate R Street Institute, and Pamela Winn,
3 Founder and Executive Director of Restore HER.

4 Dr. McLearen, please begin.

5 DR. McLEAREN: Good morning. Thank you
6 for convening such an important event.

7 In my capacity as the Administrator for
8 the Women and Special Populations Branch in our
9 nation's largest correctional agency, I spend my
10 days attending to the data on incarcerated women,
11 implementing programs for incarcerated women and
12 ensuring the Federal Bureau of Prisons continue to
13 meet the need for incarcerated women.

14 All that's to say I'm grateful to be
15 part of this. My written statement details our
16 programs, so today I'll summarize and talk about
17 what else we can do with what we know. My comments
18 are based on my experience as a clinical
19 psychologist, a federal law enforcement officer and
20 a correctional practitioner. While I've published
21 research on corrections, it's my time actually
22 working in prisons that I hope adds context and
23 value.

24 I wish to make two key points, that

1 because women and men are not the same, they
2 require varied services, and that the Bureau has a
3 number of gender-responsive practices that should
4 be considered for replication.

5 First, I'll repeat this statement,
6 women and men are not the same. It's really that
7 simple. We're all human and, therefore, we share
8 commonalities but women are different.

9 And while the differences apply outside
10 of prison, they may be magnified in correctional
11 settings where facilities are divided by gender.
12 Contrasting male versus female is not to put women
13 in a box.

14 There's incredible variation between
15 individuals and women aren't all alike, but again,
16 women and men are different. Decades of study have
17 helped us hone in not just on what those
18 differences are but why they're important.

19 Women have higher rates of
20 victimization and co-occurring psychiatric
21 disorders but lesser criminal histories.
22 Relational issues are critical. These differences
23 matter because to provide the best rehabilitative
24 or even just habilitative services to women in

1 prison, we have to understand how they got there.

2 We need to be familiar with phenomena
3 like the sexual assault to prison pipeline so we
4 know how to intervene. If we want prison to be a
5 corrective, healing experience, then we need to
6 present women with programs designed for them.

7 We can address women's criminogenic
8 needs and remain trauma-informed. Some aspects of
9 prison will be the same for all. People will be
10 assessed upon arrival, for example, but we can and
11 do use different classification models for this
12 assessment. To properly address women's needs, we
13 have to offer different structure from the ground
14 up managing their incarceration. For much of the
15 time we've had prisons, management approaches, the
16 actual institutions, and all the programs in them
17 have been designed in a one-size-fits-all fashion
18 and that size is male.

19 It makes sense because the typical
20 inmates have always been male and while some
21 systems have seen growth in their female
22 population, the federal system hasn't so 93 percent
23 of inmates are still male.

24 But we know that programs made for

1 women or those that are gender-neutral yield
2 positive outcomes. Similarly, we know that women-
3 centered management approaches engender better
4 responses and we can do these things without taking
5 anything away from men.

6 A holistic approach that includes
7 training, management and programmatic practices
8 specific to women's needs is effective and the
9 Bureau offers an excellent model of this. In our
10 organizational structure, we have a headquarters-
11 based office that oversees women's issues and
12 provides guidance to staff.

13 We have general correctional training
14 but also training specific to women's needs. We
15 have laws, such as the Prison Rape Elimination Act,
16 for all but also policies that prescribe trauma-
17 informed and gender-responsive procedures for
18 women.

19 We offer programs that any inmate can
20 enroll in but we add to that an ever-growing menu
21 of interventions that were made just for women.

22 I'll use the remainder of my time to
23 talk about how we move forward with actionable
24 items that make the best use of resource and

1 expertise. With regards to family disruption,
2 women's roles as mothers and caretakers are well
3 documented.

4 If women are more likely the main
5 providers for children before arrest, we can
6 surmise a disparate impact after arrest. There are
7 publications on how women and children are affected
8 by incarceration and separation and it's not
9 pretty. While prison systems are not
10 in positions to address sentencing, there is a good
11 deal we do to maintain mother-child bonds. They're
12 nurtured via regular contact, in-person visits but
13 also phone and video, parenting programs and
14 partnerships with communication organizations.

15 Programs that allow women to live with
16 their babies are also important. To determine what
17 more to do, we have to look at women as real
18 people. I provided treatment to women dealing with
19 the wrenching pain of missing their kids but I've
20 also worked with women who abuse their children or
21 do not see them as a priority.

22 We cannot address only the mothers who
23 fit our conception of what a mother should be. We
24 have to address them all.

1 I always have beds available in my
2 programs for pregnant women so at least in the
3 federal system, access or capacity is not the
4 problem. Let's try to learn what's so broken that
5 some women have no interest in these services.

6 Some testimony today will likely
7 address the system, but the system is just people.
8 Women who serve time are people and staff, too, are
9 people. Many of them go above and beyond every
10 single day to innovate and help and care.

11 Sound bites from celebrities are
12 helpful reminders of issues, but those who work in
13 prisons understand nuances that must guide the
14 solutions, such as the delicate balance of safety
15 and security with treatment and re-entry and of
16 best practices with resource realities.

17 The Bureau and other correctional
18 agencies are here at the table because we want to
19 engage. A tendency is often to focus on flaws in
20 the system and that's important, remember, I'm a
21 psychologist and we can't make change if we don't
22 recognize there's a problem.

23 So while we can learn from the past, we
24 cannot use past issues as representations of what

1 is going on today. Those are indicators of
2 progress. For example, the Bureau restricts the
3 use of restraints on pregnant inmates and enhanced
4 availability of free feminine hygiene products.

5 I hope we recognize the many things
6 that have changed and are working and we take those
7 initiatives, like our Female Integrated Treatment
8 program in Danbury, and we hold them up for
9 expansion.

10 I also ask that we take a look at what
11 we do outside of prison. Certainly, transitional
12 resources including safe, family-friendly housing
13 help women succeed after prison, but we're remiss
14 if we do not look at what happens before prison.

15 Prisons are among the largest mental
16 health providers in our country. If women had
17 greater access to treatment before they entered
18 prison, would fewer of them become incarcerated?

19 We survey women in Bureau custody.
20 Responding women reported greater access to self-
21 improvement programs in prison than on the outside.
22 And last, we need more evidence-based programs for
23 women to ensure their needs and rights are
24 addressed and protected.

1 We need to evaluate our current
2 programs, we need basic research telling us more
3 about subsections of the female population, we need
4 more vocational options in non-traditional fields.

5 And we need sustained interest and
6 engagement that includes correctional
7 practitioners. Thank you so very much for having
8 me.

9 CHAIR LHAMON: Thank you, Dr. McLearn.
10 Ms. Owens?

11 MS. OWENS: Thank you so much for
12 having me.

13 I represent the American Conservative
14 Union as a policy analyst. So thank you for
15 holding this important hearing and I hope my
16 testimony is helpful to this Commission in finding
17 ways to uphold the dignity of incarcerated women.

18 Women's needs are quite different from
19 men, yet they serve their sentences designed for
20 men, staffed primarily by men. As a result, many
21 walk out of the gates in worse shape than when they
22 entered.

23 It's not just the inmate that gets
24 punished, communities diminish, families suffer and

1 taxpayers are burdened. The truth is that 95
2 percent of inmates will eventually return into
3 society so it's our job to make sure that the
4 prisons and jails are well equipped to rehabilitate
5 and correct, and not solely just punish.

6 Prior to incarceration, women are three
7 times more likely than men to be the primary
8 caretaker of children. Roughly 65,000 incarcerated
9 women were mothers of 147 minor children.

10 Considering there are only 29 federal
11 women's prisons as opposed to 93 prisons for men,
12 women are disproportionately sent farther away from
13 homes.

14 Additionally, 11 percent of
15 incarcerated mothers reported that their children
16 had to be placed in foster care because they were
17 not able to take care their children just because
18 they were incarcerated, as opposed to 2 percent of
19 men.

20 The Adoption and Safe Families Act
21 requires termination of parental rights after a
22 child spends 15 to 22 months in foster care,
23 effectively guaranteeing the loss of their
24 children.

1 The mother's prison term is 19 to 20
2 months so they are almost guaranteed to lose their
3 children. Access to visits and calls with loved
4 ones help maintain a healthy mental state while
5 behind bars, and those who received visitors are 13
6 percent less likely to recidivate.

7 This shows us that close relationships
8 with one's children and family members can ease an
9 individual's transition back into society and
10 reinforce motivation for change. Approximately
11 1500 incarcerated women give birth in prison each
12 year. Given this alarming number,
13 it's shocking that only 22 states and the District
14 of Columbia have a policy or legislation that
15 they've adopted that specifically prohibits the
16 shackling of pregnant inmates, while six states
17 still absolutely have no ban on this barbaric
18 practice.

19 No pregnant inmate should be shackled
20 without evidence that she is likely to harm
21 herself, others or her baby. Shackling a pregnant
22 woman carries the risk of injury, both to her and
23 her unborn baby because it restricts maternal and
24 fetal movement. There has been absolutely

1 no documentation or attempts of where a pregnant
2 inmate tries to jump off her gurney while in labor.
3 After childbirth, mothers are separated from their
4 newborn babies which strips them away from this
5 crucial bonding period. This negative
6 effect on the child's development as well as the
7 emotional state of the mother is crucial. Research
8 has also found that most correctional facilities
9 fail to provide physician-recommended standards of
10 care for pregnant women.

11 And ignoring health standards and
12 failing to provide needed care is not maintaining
13 security; it's knowingly inflicting harm. Pregnant
14 prisoners should have access to educational
15 resources to promote their health and the health of
16 their children.

17 And in addition, prison staff must be
18 educated about the unique nutritional needs of
19 pregnant women.

20 In 2017, the DOJ mandated that feminine
21 hygiene products were to be given to inmates at no
22 cost, yet we see that many inmates continue to
23 receive an inadequate number of supplies. For
24 instance, Kimberly Haven, she received toxic shock

1 syndrome from a homemade tampon during a 15-month
2 sentence in Maryland and she had to have an
3 emergency hysterectomy to save her life. This
4 should not be the case.

5 In Colorado, it costs an incarcerated
6 woman two weeks' wages to buy one box of tampons
7 and if there's a shortage, maybe more. Women
8 should never have to choose between a feminine
9 hygiene product or a call home to maintain family
10 bonds.

11 We give the necessary products to
12 inmates such as clothes, bed sheets, mattresses,
13 toilet paper, however, because women go through
14 things that men don't, does that mean that feminine
15 hygiene products aren't a necessity to their
16 wellbeing?

17 Feminine hygiene products are more than
18 a monthly necessity, they demonstrate our society's
19 commitment to self-worth and health.

20 An astonishing 98 percent of
21 incarcerated women have experienced some sort of
22 physical, sexual or emotional abuse in their lives.
23 Situations that subject women to the power of
24 correctional officers including showers, using the

1 restrooms, strip searches can trigger traumatic
2 memories for women who have survived this abuse.

3 As a result, women inmates often live
4 in a state of hyper alertness, causing reactionary
5 behavior that may be construed as aggressive from
6 staff that result in cycles of repeated punishment
7 such as solitary confinement.

8 The American Psychological Association
9 found that 54 percent of state prisoners and 45
10 percent of federal prisoners have been diagnosed
11 with some sort of mental health condition.

12 Additionally, those with mental
13 illnesses are nine times more likely to be
14 incarcerated than hospitalized, and 18 times more
15 likely to find a bed in the criminal justice system
16 rather than a hospital. To put it
17 simply, we often view people behind bars
18 differently but each has a story and a life that
19 they left behind, and how we treat our prisoners
20 says a lot about who we are as a society.

21 Let's be honest, we all have a part to play,
22 so let's not forget about these women whose voices
23 are harder to hear behind bars.

24 So, on that, on behalf of the American

1 Conservative Union, we strive to educate people on
2 ways to reform the criminal justice system at both
3 the state and federal levels. We support reforms
4 based on conservative principles.

5 We believe that every human being has
6 inherent value and, thus, we work to improve
7 conditions of incarceration for all.

8 So thank you so much for allowing me to
9 be here and presenting this testimony for
10 incarcerated women.

11 CHAIR LHAMON: Thank you, Ms. Owens.
12 Dr. Salisbury?

13 DR. SALISBURY: Thank you, Madam Chair
14 and Commissioners, for inviting me to participate
15 in this briefing. My name is Emily Salisbury and
16 I'm an Associate Professor of Criminal Justice from
17 the University of Nevada, Las Vegas.

18 I have been asked primarily to focus my
19 testimony on the issues surrounding the inequity of
20 custody classification and needs assessment of
21 incarcerated women.

22 I'll leave it to other panel experts to
23 discuss in greater detail the many other critical
24 issues that harm women in prison and that are in

1 need of attention.

2 It's been nearly 20 years since the
3 National Institute of Corrections, which is a
4 division of the U.S. Bureau of Prisons, discovered
5 that the vast majority of state departments of
6 corrections and the Federal Bureau of Prisons
7 primarily use custody and needs classification
8 assessments based on incarcerated men for
9 determining incarcerated women's custody levels and
10 programming needs.

11 Unfortunately, the situation remains
12 largely the same today despite the gender-
13 responsive solutions that emerged from my and my
14 colleagues' research funded by the NIC, again, a
15 division of the BOP.

16 Of course, the question of whether
17 women's custody and treatment needs in prison are
18 exactly the same as men's is an empirical one and I
19 can tell you that the answer to this research
20 question is a definitive no.

21 Nearly 50 years, five-zero, of
22 qualitative and quantitative research from scholars
23 in the fields of criminology, law, social work,
24 women's studies, medicine, public health,

1 psychology, psychiatry and sociology tell us that
2 women are, sure enough, different and in need of
3 different, distinct needs. This has also
4 been demonstrated from my scholarship. One of the
5 major solutions of our NIC-funded research was the
6 development and validation of a series of risk and
7 needs assessments specifically designed by and for
8 justice-involved women.

9 The Women's Risk Need Assessment, also
10 called the WRNA, allows prison staff to measure and
11 case-plan around the specific areas of risk and
12 need that justice-involved women have, and the
13 manner in which the assessment is conducted is
14 intentionally designed to be delivered in a
15 collaborative, gender-responsive and trauma-
16 informed way with women.

17 11 state correctional departments are
18 currently using the WRNA in their female
19 facilities, along with the countries of Singapore
20 and the Czech Republic. I was part of the research
21 team who created the WRNA and I'm astonished that
22 the BOP has yet to adopt this assessment system
23 with its 29 women's facilities.

24 After all, a division of the BOP funded

1 the research. And while staff in the Women and
2 Special Population Branch at BOP who are sitting
3 here today have genuinely tried to do their best
4 with the custody classification system that they
5 have to use, any instrument that does not include
6 the gender-responsive needs that statistically
7 predict women's struggles will never be accurate
8 and valid.

9 It's what I call psychometric
10 gymnastics: when correctional agencies assign
11 different statistical weights and cut-points and
12 algorithms to try to fit the assessment system to
13 women, whereas this wouldn't even need to happen if
14 we started with women in mind in the first place
15 like we did when we created the WRNA.

16 The cost of treating women like men are
17 vast and exacerbated in confinement settings. A
18 body of research shows that when we use offender
19 risks and needs assessments designed for men with
20 women, they most typically end up overclassifying
21 women.

22 This means that they over-predict
23 women's likelihood of engaging in misconducts in
24 prison and recidivism in the community. This over

1 prediction causes prisons to keep women in more
2 severe prison conditions and to put more
3 restrictions on them than is warranted by their
4 behavior compared to men.

5 To my knowledge, the BOP has never
6 studied its classification tool for women to
7 determine if this overclassification is occurring
8 compared to men. And as far as determining women's
9 programming needs, it's my understanding that the
10 BOP custody tool does not even ask about these
11 needs.

12 Most importantly, our NIC-funded
13 research found that several of the gendered needs
14 actually function as risk factors for women's
15 misconducts in prison.

16 Women who suffered from child abuse,
17 who showed symptoms of depression or anxiety, who
18 were angry, who had symptoms of psychosis, who had
19 histories of substance abuse, or who were engaged
20 in unhealthy dysfunctional intimate relationships
21 were more likely to incur serious misconduct
22 violations within one year of incarceration
23 compared to women who didn't display such
24 characteristics.

1 As a result, prisons should be doing
2 more to focus on these needs that are specific to
3 women's gendered experiences because they are
4 literally driving the problematic behavior that
5 staff are concerned about within prisons and in the
6 community upon release.

7 And while the FIRST STEP Act is
8 certainly progress, I'm afraid it will mistakenly
9 perpetuate the problem because it is now codified
10 into law that the BOP implement a risk assessment
11 instrument, but not one that is gender-responsive
12 or gender-specific or trauma-informed because it's
13 not legally mandated to do so.

14 Nevertheless, it should be kept in mind
15 that the overwhelming majority of incarcerated
16 women in this country are held in state prisons and
17 local jails, not the BOP.

18 Of course, this doesn't mean we should
19 neglect the women housed by BOP but we have to
20 understand that this is largely an issue that needs
21 to be addressed by states and local jurisdictions.

22 Finally, despite the smaller numbers of
23 women in prison, we must not forget that every
24 single policy, practice and procedure that we put

1 in place that was designed for men and then applied
2 to women affects every single woman 100 percent of
3 the time, not 7 percent, not 8 percent, or whatever
4 the incarceration rate of females is in any given
5 correctional system.

6 We harm women, their children and their
7 communities daily when we don't address their needs
8 and empower their strengths, but it's not like
9 there aren't solutions. We have the solutions and
10 that's perhaps the hardest part of this day and
11 this briefing.

12 The fact that we have evidence-based
13 and gender- responsive and trauma-informed and
14 culturally sensitive solutions, but the fact that
15 we don't have enough enforcement and people who are
16 courageous enough in positions of power to dare to
17 care about this population.

18 I'm grateful to have the honor of
19 presenting this testimony today. I want you to
20 know that I don't take it for granted, nor do I
21 take it lightly: the privilege to be able to speak
22 on behalf of women who haven't had the opportunity
23 to speak for themselves on this issue.

24 Thank you.

1 CHAIR LHAMON: Thank you, Dr.
2 Salisbury. Ms. Mooney?

3 MS. MOONEY: Thank you for inviting me
4 to testify on such an important topic today. My
5 name is Emily Mooney, I am a member of the Criminal
6 Justice and Civil Liberties Team at the R Street
7 Institute. R Street is nonprofit
8 public policy research organization dedicated to
9 promoting limited effective government.

10 During my testimony, I will first
11 provide a brief overview of recent trends as well
12 as the unique needs presented by women in prison.
13 I will then turn my attention to the harms
14 associated with the familial disruption in maternal
15 incarceration and conclude with a short agenda for
16 change.

17 The decision to incarcerate marks the
18 zenith of government intervention, at which point
19 we have entrusted our justice system with the power
20 to revoke much of an individual's personal liberty,
21 a sacred right in this country, in the name of
22 public safety and accountability.

23 Therefore, it is of the utmost
24 importance that we as a society ensure that the

1 aims of such interventions are being accomplished
2 and that our fundamental values remain respected.

3 To do so, we must ensure that when we
4 incarcerate, we preserve human dignity, improve
5 public safety, wisely allocate taxpayer dollars and
6 promote a stronger and freer society.

7 Today our nation is failing to achieve
8 these fundamental aims. When facilities fail to
9 provide adequate services and assess the unique
10 needs presented by women in prison, the justice
11 system is at risk of jeopardizing public safety,
12 devaluing human dignity and squandering taxpayer
13 dollars.

14 When we fail to account for the human
15 toll of familial disruption, we miscalculate the
16 societal cost of incarceration, the true cost to
17 the detriment of women, their families and society
18 at large.

19 Over the last several decades, the
20 number of women in prison has increased
21 exponentially. In 1985 there were roughly 23,000
22 women in state and federal prisons and by 2016 this
23 number grew by over 380 percent to 110,000 women.

24 In contrast, over the same time period,

1 the number of male's prisoners under state and
2 federal jurisdiction grew by roughly 190 percent.
3 As the number of women in prison has increased, so
4 has the importance of assessing their unique
5 pathways to crime and barriers to re-entry.

6 Indeed, research shows that women
7 entering prison report higher rates of trauma,
8 mental health issues and substance abuse and were,
9 as a whole, more impoverished than males at the
10 time they enter.

11 Yet research also shows that federal
12 and state facilities continue to fail to provide
13 adequate services to meet these most basic needs.
14 For many incarcerated women, these adversities are
15 multifaceted and closely intertwined and must be
16 addressed comprehensively.

17 Rather than being treated with the
18 dignity and care appropriate for their experiences
19 of trauma, women are at high risk of further
20 victimization while behind bars.

21 Further, correctional staff and state
22 facilities still often fail to receive the trauma-
23 informed and gender-responsive training necessary
24 to equip them to interact with a different

1 population. Finally, the behavioral,
2 mental and physical health services needed to
3 support imprisoned women are also lacking, as will
4 be expanded upon by future panelists today.

5 When we fail to acknowledge the
6 traumatic experiences and struggles faced by
7 imprisoned women, we miss an opportunity to promote
8 healing and transformation and to give broken
9 people and families a more stable foundation.

10 Given their role as primary caretakers,
11 the rising number of women in prison also inflicts
12 harm upon families. Indeed, estimates provided by
13 the Bureau of Justice Statistics suggest that eight
14 in ten women who lived with their child prior to
15 their incarceration provided most of their child's
16 daily care.

17 This means that children of
18 incarcerated mothers are often separated from the
19 person upon whom they depend most. Whereas
20 incarcerated fathers may rely on their child's
21 mother to provide their child's care during their
22 absence, incarcerated mothers turn to extended
23 family, grandparents and sometimes the foster care
24 system.

1 The resulting familial disruption
2 brings with it a host of negative externalities.
3 Children practically present a new financial and
4 emotional burden for caretakers, and research shows
5 that children who have incarcerated mothers are at
6 a higher risk for not forming healthy child
7 attachments, a cornerstone in positive child
8 development.

9 Further, maternal incarceration can
10 harm a child's health, bring shame and stigma and
11 promote antisocial behavior. When children of
12 women in prison don't have parents that can care
13 for them or relatives, they may find themselves in
14 foster care. A national estimate suggest that one
15 in nine women in state prisons has a child in
16 foster care, and in 2013 alone, approximately
17 20,000 children were placed in foster care at least
18 in part due to their parent's incarceration.

19 Now, scholars show that in other cases,
20 having a child placed in foster care may actually
21 precede and accelerate a mother's downward spiral,
22 ultimately leading to her incarceration. All
23 mothers are not in similar circumstances.

24 Regardless of the order of events, when

1 a female prisoner's child is placed in foster care,
2 familiar reunification becomes all the more
3 difficult. Social workers now have
4 the arduous job of coordinating child contact and
5 visits with the parent behind prison walls, and as
6 the distance between an incarcerated parent and
7 their child increases, so does the difficulty of
8 securing visitation and communication.

9 Even when a parent is placed in a
10 facility nearby, other factors can practically
11 undermine a positive child-parent relationship.

12 Phone calls and other forms of
13 communication are expensive, children rely on
14 caretakers to facilitate a relationship, and
15 visitation policies that disallow physical contact
16 may make visitation a negative or traumatic
17 experience for children.

18 As noted by Kaitlin, the Adoption and
19 Safe Families Act also puts parental rights at risk
20 of being terminated. Thus, women with longer
21 prison sentences or those who fail to re-enter
22 society successfully and are quickly reincarcerated
23 are at greater risk of having their parental rights
24 terminated.

1 In some cases, this may not be in the
2 child's best long-term interest and in others it
3 may be, but may simply put further strain on social
4 services agencies.

5 In all cases, the important role that
6 female prisoners play as mothers makes ensuring
7 their restoration and transformation behind bars as
8 well as their successful re-entry into society
9 doubly important.

10 Often their families are counting on
11 them to re-assume their duties as parents and
12 children are harmed when returning parents fail to
13 live a more productive, healthy lifestyle.

14 To conclude with the short agenda for
15 change, the U.S. Commission on Civil Rights should
16 work to promote changes to state and federal policy
17 that provide for the needs of women in prison and
18 mitigate the harms associated with familial
19 disruption.

20 Jurisdictions should first assess the
21 current needs of women in prison as well as the
22 services available to meet them, and both
23 correctional officers and correctional
24 administrations who craft policy should be properly

1 equipped to interact and make policy for women.

2 Barriers to familial connections should
3 be minimized to the greatest extent possible and
4 social service and correctional agencies should
5 collaborate to remove and identify barriers to
6 familial reunification and promote successful re-
7 entry to ensure the needs of both mother and child
8 are met. When formerly incarcerated
9 women commit new crimes and return to prison, both
10 public safety, child welfare and society suffer.
11 We pass on a legacy to yet another generation.

12 It is time that we identify incorrect
13 current barriers in policy and provide women in
14 prison a pathway towards true restoration.

15 Thank you for your time.

16 CHAIR LHAMON: Thank you, Ms. Mooney.
17 Ms. Winn?

18 MS. WINN: Good morning. I sincerely
19 appreciate your empathy into looking at the
20 conditions of incarcerated women. My name is
21 Pamela Winn. I am the founder for Restore HER,
22 which is a nonprofit organization that advocates
23 for incarcerated women. I am also an RN
24 and I am also a formerly incarcerated women. I

1 served a 78-month federal sentence and today I
2 speak on behalf of the invisible women, and I call
3 them the invisible women because we are the women
4 that are not included in the criminal justice
5 reform conversations.

6 No one wants to talk about our needs;
7 no one wants to talk about the harm that is done to
8 us.

9 During my 78-month sentence, I was
10 pregnant during my incarceration. I was shackled.
11 During the shackling, I fell and when I fell I was
12 not taken to medical, nor an ER or anywhere. And
13 then for two weeks my medical requests were ignored
14 and I was bleeding. I was told that it was normal
15 after two weeks of finally sending requests.

16 At that point, I explained to them that
17 based on my medical knowledge and my education,
18 that it was not normal.

19 At that point, they told me that the
20 only way they could take me out to be seen is that
21 they had to send a request to the U.S. Marshals at
22 get approval, which was a four-week turnaround
23 period.

24 So now we're talking about seven weeks

1 later, I go to the ER and it's no longer an
2 emergency and I'm turned away. We have to do
3 another request, another four-week turnaround
4 period, to get me to the obstetrician.

5 At that point, I needed an ultrasound,
6 which they did not have on premises at their
7 facility so that was another request and another
8 four-week turnaround period.

9 During this time, I ended up
10 miscarrying and when I miscarried, I was locked in
11 a cell with no emergency call, no way to call
12 anybody. It was dark, no lights.

13 We got locked down at 10:00 p.m. and it
14 wasn't until about 2:00 in the morning before
15 anyone came around and found me. At that point, it
16 was a debate whether to call 911 or call the U.S.
17 Marshals to take me to the ER.

18 When I arrived at the ER, the Marshals
19 met me there and I was immediately shackled to the
20 bed. Then, once I got an ultrasound to see what
21 the status of my child was, I was told that I had
22 passed my baby and the guards were asked where was
23 the linen and the things that I had bled on? And
24 they said that they threw it in the trash. So my

1 baby was thrown in the trash.

2 After that, I was put in solitary,
3 which they called medical observation. I spent a
4 total of about four months in solitary.

5 First it was medical observation, then
6 I was transferred to another facility. They had
7 local inmates so it was for my protection at that
8 point, and that's where I remained until I was
9 designated to a federal facility.

10 The women that I bring to this room
11 with me today, my story is one of many of theirs
12 and what's consistent with all our stories are
13 shackling, solitary confinement, inadequate medical
14 care, harmful, dehumanizing conditions -- because
15 during the time that I was miscarrying, I had two
16 male officers between my legs the entire time that
17 refused to leave the room and give me any kind of
18 privacy or dignity -- and family disruption.

19 A common trend among not just federal
20 and state but also local, county and private
21 facilities is that there is no standardization of
22 care and the lack of standardization, what it does
23 is it provides and encourages your constitutional
24 protections and your rights to be blatantly

1 disrespected and violated.

2 So, today for me I would ask from this
3 briefing and from this report if you all would
4 consider, we should have a national ban on
5 shackling. Yes, the FIRST STEP Act
6 passed, which does ban shackling, however, what
7 needs to be known is that, like was said by one of
8 the other panelists, federal and state contract
9 with local and county facilities and they are
10 rampant with this type of behavior.

11 They do their own things; they don't
12 have standardization of care, and they kind of call
13 their own rules. And so although there is a
14 federal law in place, it will not matter if you are
15 in one of those places, which I was. I was in a
16 private facility that contracted with the federal
17 government.

18 At the end of the day, I say the
19 condition of women in prison is the responsibility
20 of the American society.

21 We have created this problem and it was
22 created by government entities, mandatory minimums,
23 lawmakers, the War on Drugs, and then it was
24 perpetuated by the American society that continues

1 to practice racism, classism, sexism and these
2 things which devalue women that are incarcerated.

3 In order to improve these conditions,
4 those are things that we must address and we must
5 speak up, and we must have a voice for these
6 invisible women and do what we can to make a
7 gender-specific environment for them that does not
8 further perpetuate harm for them and their
9 families.

10 Thank you.

11 CHAIR LHAMON: Thank you very much, Ms.
12 Winn. With that, I will open our panel for
13 questions from my fellow Commissioners.
14 Commissioner Kladney, do you want to start us off?

15 COMMISSIONER KLADNEY: Thank you, Madam
16 Chair. Ms. Winn, I'm sorry for your loss. I was
17 wondering if you could describe for me what 24
18 hours is like in solitary confinement.

19 MS. WINN: I get this question often.
20 People ask me, how did I maintain. My answer to
21 that is I would start my day by thinking about my
22 two sons, imagining what their day was like, what
23 they may have been doing at that time, remembering
24 fond memories of being with them.

1 And then when I would exhaust those
2 thoughts, I would think of plans when I return home
3 of things that I wanted to do. And when I would
4 exhaust those thoughts, I would picture places I
5 wanted to be and what I would want to be doing
6 instead of being where I was.

7 And once I exhausted those thoughts, I
8 would just pray, pray to have peace, pray to go to
9 sleep, and pray for another day, which I didn't
10 know when I would wake up if it was another day or
11 not because there are no windows so you don't have
12 any concept of day or night.

13 So, I would just pray that when I woke
14 up it was another day and it would be a day closer
15 to me being able to get out of there.

16 COMMISSIONER KLADNEY: And do you have
17 any human contact while you're in solitary?

18 MS. WINN: No, sir, and the hour that
19 you're let out, you have an hour and in that time,
20 you have to do your laundry, exchange your laundry.
21 Some days you get a shower because you don't shower
22 every day.

23 So if you have a shower that day you
24 would need to shower, if you wanted to go outside

1 you could go outside but you can only see up
2 because everything around you is closed off by
3 cement.

4 And if you have time, try to call your
5 family and speak to them.

6 COMMISSIONER KLADNEY: Thank you. Dr.
7 Salisbury, could you tell me on these
8 classification tools, what is taken into account?
9 Do they take vocational needs, educational needs,
10 things like that? Or is it just conduct?

11 DR. SALISBURY: Thank you, Commissioner
12 Kladney. So it depends on whether we're talking
13 about a custody classification instrument or a
14 needs assessment instrument.

15 So a custody classification instrument
16 typically only includes what we call static or
17 fixed factors that are typically focused on
18 criminal history.

19 So things like what was the kind of
20 crime like, what was the seriousness of the
21 offense, has this person ever been incarcerated
22 before and were they a problem in the institution
23 before, how many misconducts did they incur.

24 Upon reclassification, though, of

1 custody, which should happen usually around every
2 year or whether there's a significant event that
3 happens in the institution or with that individual,
4 reclassification oftentimes will have a couple of
5 variables, maybe one or two that are focused on
6 whether or not the person had been involved in
7 programming or vocational programming or treatment
8 programming to see if they can downgrade or if they
9 need to upgrade the custody classification.

10 But needs assessment instruments, which
11 sometimes drive custody and sometimes they don't,
12 it just depends on the jurisdiction and the State
13 Department of Correction or BOP, will include those
14 different needs that are more dynamic in nature and
15 things that can be changeable and changed within
16 treatment interventions.

17 COMMISSIONER KLADNEY: Thank you. Dr.
18 McLearn, you're with the Women and Special
19 Population Branch, is that correct?

20 DR. McLEAREN: Yes.

21 COMMISSIONER KLADNEY: You mentioned
22 that BOP has made some progress. Could you tell us
23 specifically what progress you think they've made?

24 DR. McLEAREN: Absolutely, and thank

1 you. So, the Bureau of Prisons has obviously been
2 a correctional agency for quite a long time and
3 some kind of a position working on female issues
4 has also existed for a long time.

5 But it wasn't until 2014 that the
6 Bureau made the decision to take female issues, as
7 well as some other critically important re-entry
8 issues and set them aside in a separate division to
9 allocate appropriate resources.

10 So they were moved under the Reentry
11 Services Division umbrella and that was when I came
12 on board to become the administrator over the
13 female issues and of the Women and Special
14 Populations Branch and it became a real branch.

15 So I would say that's the first step of
16 progress. Additionally, it was just me when that
17 branch started and we've increased the staffing
18 significantly. We quickly implemented a
19 comprehensive policy, the Female Offender Manual,
20 that prescribes what kind of programs we need to do
21 that are gender- responsive at all of our
22 facilities, some different ways to manage women,
23 addresses gender-responsive discipline and why
24 that's important.

1 We implemented a large menu, I
2 referenced, of programs that were specific to
3 women. So in 2014, we did have a trauma treatment
4 program. We expanded that across our female sites
5 and we've added more than 15 other programs, a dual
6 diagnosis, a women-specific residential drug abuse
7 treatment program.

8 In 2017 we issued guidance on expanding
9 access to feminine hygiene products so while they
10 were always available at no cost to inmates, we had
11 no standardization and so, therefore, not
12 necessarily variety.

13 So since then, we've required at least
14 five products at every female institution and in
15 December of last year, we issued additional
16 guidance prohibiting rationing, explaining how
17 those items need to be accessible so that people
18 are not placed in an undignified position of having
19 to ask for them, that they're available in common
20 areas.

21 And last, I think I'd like to talk
22 about, which this was in my written statement, our
23 female integrated treatment program, which is
24 really a flagship program that we've put in at the

1 low-security female facility in Danbury.

2 It's integrated which means that
3 instead of having to address trauma or mental
4 health needs or things in separate parallel order,
5 they're all done together.

6 Every single person in that facility is
7 part of a treatment community and the entire prison
8 operates as a modified therapeutic community or a
9 treatment facility versus a traditional prison
10 model.

11 COMMISSIONER KLADNEY: Thank you.

12 CHAIR LHAMON: Commissioner Kladney,
13 I'm going to call this as your last question and
14 then we'll get the other Commissioners' questions.
15 If no one else has questions, you can come back.

16 COMMISSIONER KLADNEY: Thank you, Madam
17 Chair. You said that your Division was greatly
18 increased in population.

19 According to the OIG report, you have
20 four people and it also called for more people and
21 it also called for the executive staff to actually
22 take the training that you required of the entire
23 staff at women's prisons.

24 My question is, has your staff, has

1 your division increased beyond four people? And
2 has the executive staff taken the training?

3 DR. McLEAREN: Thank you.

4 We currently have four staff in the
5 Women and Special Populations Branch; that's
6 correct. We have two additional positions that are
7 not filled at this time so that would increase the
8 total staffing to six, counting me. But in 2014 it
9 was just me.

10 And with regard to the executive staff,
11 most members of the executive staff have completed
12 the trauma-informed care component of the training
13 that we require for female facilities.

14 We had planned for me to personally
15 give the remaining training to those who had not
16 completed it, some have. But that was at a meeting
17 that was scheduled during the shutdown so we will
18 be rescheduling that for the future.

19 So there are some that have not
20 completed the remaining portion.

21 Thank you.

22 CHAIR LHAMON: Other questions?
23 Commissioner Kirsanow?

24 COMMISSIONER KIRSANOW: Thank you,

1 Madam Chair, and thanks to all of the witnesses.
2 Just a couple of numerical questions. I think, Ms.
3 Mooney, you indicated, and maybe I got this wrong,
4 there was 23,000 inmates in 1985 and there's now
5 110,000, is that correct?

6 MS. MOONEY: Approximately 23,000
7 women. The Bureau of Justice statistics counts
8 prisoners with a greater than one-year sentence or
9 longer, so approximately.

10 COMMISSIONER KIRSANOW: And I'm
11 assuming those are federal prisoners?

12 MS. MOONEY: No, those are state and
13 federal prisoners.

14 COMMISSIONER KIRSANOW: Okay, good.
15 I think also, and I just want to make sure I've got
16 the numbers correct here, I think, Ms. Owens, you
17 indicated that there were 28 female prisons and 83
18 male prisons, federal prisons, is that correct?

19 MS. OWENS: Twenty-eight federal
20 women's prisons and 83 men.

21 COMMISSIONER KIRSANOW: Okay, do you
22 have any data as to the relative population sizes
23 in those prisons?

24 MS. OWENS: At the 28 federal women's

1 prisons?

2 COMMISSIONER KIRSANOW: Yes, both. I
3 just want to get a sense for what's the relative
4 population size between female prisons and male
5 prisons. Is it the same, is it larger, smaller?

6 MS. OWENS: Right, so about five
7 percent of women hold the state and federal
8 statistics and then 95 are men.

9 COMMISSIONER KIRSANOW: And I think it
10 was Ms. Mooney again, there were 23,000 federal
11 prisoners --

12 DR. McLEAREN: May I address the female
13 prison population in the federal systems? I
14 apologize, I don't know the procedure for jumping
15 in. We have 29 facilities for females and some of
16 those are two prisons that are co-located on the
17 same site. So 29 locations but, for example,
18 Carswell or Aliceville have two female prisons of
19 different security levels or different missions
20 located in the same site.

21 Our female federal population is about
22 12,000 individuals. Some of the facilities are as
23 larger as about 1,000 people and some of them,
24 particularly the lower security, what we call a

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1 camp or a minimum, are smaller and so may have just
2 a few hundred individuals at that location.

3 COMMISSIONER KIRSANOW: Great. Thank
4 you very much.

5 DR. McLEAREN: Thank you.

6 COMMISSIONER KIRSANOW: And I think
7 this is also directed to Ms. Mooney, and this may
8 not have anything to do with prisons necessarily
9 but just there was an incredible explosion, 23,000
10 to 110,000. Any data, any evidence as to what
11 caused that explosion in the prison population?

12 MS. MOONEY: So as some of the other
13 panelists noted, changes in policy are one part of
14 that, as well as how jurisdictions change and how
15 they prosecuted women.

16 So typically in the last couple of
17 years, we've actually seen a decrease in male and
18 female populations in typically urban areas,
19 however, rural areas are continuing to see an
20 increase in incarceration.

21 And something I didn't mention but I
22 think is interesting is we've also seen different
23 trends in states when states have implemented
24 criminal justice reform, that sometimes the male

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1 population starts to decrease but the female
2 population either stagnates or increases.

3 So this kind of just I think shows that
4 female needs are not being assessed, even when
5 we're implementing really great reforms that are
6 thought to help the entire population. So those
7 disparate trends are something that remain
8 unaddressed.

9 COMMISSIONER KIRSANOW: Thank you.

10 CHAIR LHAMON: Commissioner Narasaki?

11 COMMISSIONER NARASAKI: Thank you,
12 Madam Chair. So I have a few questions. There was
13 a lot of testimony about the need to try to keep
14 women closer to their families so that they could
15 visit.

16 There's only 29 or however many, so
17 obviously there's not even one per state, which
18 would make it very difficult.

19 So, are there any plans, strategies, is
20 there plans to build more, to contract, to have
21 alternative facilities in order to make it more
22 possible for women to be closer to their families
23 so that when they do get out, there will be more
24 positive outcomes?

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1 DR. McLEAREN: I'll go ahead and go
2 first and then maybe if some of you want to speak
3 to the state or local issues that would be helpful.

4 I feel like I want to make sure I keep
5 clarifying, like I can speak to the federal system
6 and what we do in our practices, and some of those
7 will be very similar across the board and others of
8 those may be specific to the Bureau of Prisons.

9 So, yes, there's 29 facilities and I
10 don't think that we're here to suggest that we
11 build more prisons, but that means that just by
12 math, if you're spreading those across the country,
13 there may not be a facility right near somebody's
14 home.

15 We require that our staff attempt to
16 place individuals at facilities within 500 miles as
17 a starting point and we also require in our Female
18 Offender Manual, the policy that's specific to
19 women, that the location of children and families
20 is considered and discussed so that's a
21 collaborative process if you're looking at trying
22 to get someone closer to home over time.

23 The last thing I want to point out is
24 that part of our process towards re-entry is the

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1 residential re-entry center, or what you might
2 think of as a halfway house.

3 We call them RRCs and those are the
4 facilities that are community-based that somebody
5 transitions into on their way out of the system
6 where they can continue to do programs.

7 And we have more than 200 of those
8 facilities so it's much more likely that somebody
9 would be placed in their local community or very
10 close to their local community at that end part
11 before they are completely released from the
12 system.

13 COMMISSIONER NARASAKI: So basically,
14 Dr. McLearen, if you're not building more
15 facilities or finding alternatives, if you only
16 have 29 in their 50 states, then you will not be
17 close, most people will not be close, to where they
18 came from.

19 It's just not physically possible. So,
20 it sounds like there just isn't any plan to address
21 that problem and it seems to me 500 miles, that's,
22 what, 8 hours at least away?

23 Which if you don't have a car, which I
24 would assume many women, because they're coming in

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1 from impoverished circumstances, are not going to
2 be able to get their kids there.

3 DR. McLEAREN: It's definitely a
4 challenge, you're absolutely right. There's 50
5 states and 29 facilities.

6 COMMISSIONER NARASAKI: That's okay.
7 So, the legislation that was recent was called
8 First Steps. I assume that means there are other
9 steps?

10 MS. MOONEY: Many steps.

11 COMMISSIONER NARASAKI: So what other
12 steps need to happen since we only have the first
13 one? If you ruled the world, what are the next
14 steps? What didn't happen that needs to happen?

15 DR. SALISBURY: Thank you for the
16 question. Sorry, I'll be brief, I know we're
17 running out of time.

18 Again, as I wrote in my testimony and
19 said today, I think it's really imperative to
20 highlight the fact that, again, this risk
21 assessment tool and system that's been mandated by
22 the First Step Act is progress, however, again,
23 it's not a gender-specific tool.

24 So that means that we are going to

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1 continue to ignore the gender-responsive and
2 trauma-informed needs of justice-involved women and
3 women prisoners in the federal system.

4 And I think it's important also to
5 mention that risk assessment and needs assessment
6 are really important because they drive every
7 subsequent decision on behalf of that prisoner
8 throughout his or her term. And so if the
9 questions are not asked appropriately or not asked
10 at all on the front end, then that means we are
11 going to continue to not address them throughout
12 the system on the back end and into the community.

13 COMMISSIONER NARASAKI: Sure, Ms. Winn?

14 MS. WINN: To your first thing, I would
15 say please not advocate for more prisons but could
16 we advocate for alternative sentencing? For me, I
17 did not see my sons the entire five years I was
18 incarcerated because of location.

19 But again, no more prisons, alternative
20 sentencing, please, and if it was my perfect world,
21 we would ban shackling and solitary nationwide.

22 We would also provide a standardization
23 of care and best practices nationwide, and we would
24 hire adequate medical staffing, knowledgeable

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1 medical staffing and do training, gender-specific
2 and sensitized training, for guards.

3 COMMISSIONER NARASAKI: Great, thanks,
4 Ms. Winn. And I wanted to ask because you had
5 brought up the issue of you were in a private
6 facility --

7 MS. WINN: Yes, ma'am.

8 COMMISSIONER NARASAKI: And in the
9 written testimony at least, I read everything and I
10 might have missed it, but there was not a whole lot
11 of discussion about the role of private prisons.
12 And so I hope that afterwards, because we won't
13 have time here, you might consider those of you who
14 have thoughts about that.

15 I'm concerned because since private
16 prisons want to maximize profit, I think it makes
17 them less likely to provide adequate healthcare, to
18 provide adequate training because their job is to
19 maximize profit. So, any post-briefing comments
20 you have on that would be much appreciated.

21 MS. WINN: The facility that I was at,
22 like I said, they blatantly told me that they were
23 not able to do anything for me. They told me that
24 they didn't expect to have women there, they

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1 definitely did not expect to have a pregnant woman
2 there.

3 They say they didn't even have a
4 prenatal vitamin that they could give me.

5 They had no contracts with any OB
6 doctors so when I was in solitary under medical
7 observation, my question to them was what are you
8 observing because if you've already told me that
9 you have nothing for me here, what is going to
10 happen when I have a situation which I did end up
11 having?

12 And they weren't prepared, they didn't
13 know what to do, and to this day, from my
14 understanding, because I try to keep up with them,
15 they still really don't have anything in place as
16 of now.

17 COMMISSIONER NARASAKI: Thank you.

18 CHAIR LHAMON: Ms. Owens, I just wanted
19 to give you a chance. It looked like you were
20 going to answer the First Step Act questions.

21 MS. OWENS: Yes, I was hoping to answer
22 both questions actually. For the first one, I
23 agree with everyone.

24 I would hope we don't build more

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1 prisons, I hope we close prisons to be honest, but
2 60 percent of women are in prison because of
3 substance abuse. That's a lot, and as I said
4 before, more people are likely to find a prison bed
5 open than a hospital.

6 And for substance abuse, women and men,
7 it should not be a prison that they go to, it
8 should be a treatment facility.

9 And so to your first question, I think
10 that instead of housing more inmates in prison and
11 putting them behind bars, I think we need to have
12 treatment programs and things like that to help
13 them. And again, like I said, 95
14 percent of inmates are going to be released so it
15 just reflects back on us on how are we going to
16 treat people behind bars with human dignity?

17 And to the second question with the
18 First Step Act, I would like to see a nationwide
19 ban as well, federal, state, and local levels, not
20 shackling pregnant inmates, but also just educating
21 every correctional officer, whether it's a female
22 or a male. When women have substance
23 abuse issues, they more than likely have been
24 abused traumatically, physically, sexually.

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1 And so like I've said in my written
2 statement, a lot of post-traumatic stress comes
3 about that, so training the correctional officers
4 to deal with those needs are really important and I
5 would love to see that in the second or third
6 step.

7 CHAIR LHAMON: Thank you. Madam Vice
8 Chair?

9 VICE CHAIR TIMMONS-GOODSON: Yes, thank
10 you very much Madam Chair. Thank you to the
11 panelists for appearing.

12 Dr. McLearen, you started off talking
13 about that women and men are different and you went
14 on to say that the differences are magnified by
15 prison. And that came through loud and clear in
16 much of the testimony that we've received, written
17 testimony, from others.

18 I was wondering if you could talk to us
19 about the average age of the women in federal
20 prisons and in state prisons?

21 And where I'm going with this is that
22 we've heard 60 percent of the women in prison have
23 substance abuse issues so I then want you to talk
24 to me about what the standard is for providing

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1 gynecological exams.

2 Did we get all that?

3 DR. McLEAREN: I think so. All right,
4 thank you, and remind me if I veer off in the wrong
5 direction. Okay, so starting with average age, I
6 actually brought some data with me so that I could
7 be really precise.

8 And again, I can speak to federal
9 prisons, although, this is a place that I don't
10 think we differ vastly with the state system.

11 There are some places, like in terms of
12 the type of offense, that there might be
13 differences but our largest age group is going to
14 be women ages 26 to 45, and that's going to be over
15 60 percent of our population.

16 So, you may have seen that we are
17 seeing in corrections as a whole this sort of
18 graying of corrections, that we're seeing more
19 older individuals coming into prison as well as
20 because of longer sentences, people doing time
21 until they are much older.

22 But our female population that is over
23 65 is only about 2 percent, so very small.

24 VICE CHAIR TIMMONS-GOODSON: So that 26

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1 to 45 is basically within prime childbearing years
2 and so I want you to talk about what the standard
3 is in terms of providing gynecological examinations
4 for women.

5 CHAIR LHAMON: And before you answer
6 that I just want to say to you that if we don't ask
7 you the magic words to get the rest of the data
8 that you brought today, we still would like you to
9 submit it.

10 DR. McLEAREN: Absolutely, anything you
11 need, the policies that I've referenced, I'll
12 follow up.

13 Okay, so gynecological care and to the
14 points of providing materials, what I can do is
15 submit to you our patient care program statement so
16 you don't just have my little blip here but you
17 have in detail exactly what is required by policy.

18 Facilities that house women have a
19 different staffing complement, if you will, in both
20 medical and in psychology departments so that you
21 would have a higher ratio because there are,
22 obviously, unique medical needs.

23 And I know you're going to hear about
24 those later on today but a woman's reproductive

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1 system requires significant attention and
2 intervention, especially during childcare ages.

3 When people enter into the system,
4 everyone is administered a pregnancy test so that
5 we know.

6 If an individual comes into the system
7 with child, we are able to immediately identify
8 them, assign a code in our data system so that we
9 are made aware so that there are certain things
10 that would go into place in terms of how we manage
11 that individual. Like if they need to be in
12 a lower bunk, or they need to be closer to food, or
13 they need to have extra nutritional meals, everyone
14 would become aware. And then they do get
15 gynecological exams.

16 We try to have a gynecologist or a
17 women's health specialist on staff at our
18 facilities, but medical staffing can be a
19 challenge.

20 Hiring physicians that want to work in
21 prisons is not always an incredibly easy task, so
22 there are places where that is contracted out.

23 VICE CHAIR TIMMONS-GOODSON: Thank you.

24 CHAIR LHAMON: Thank you. Commissioner

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1 Yaki?

2 COMMISSIONER YAKI: Yes, thank you very
3 much. I thank all of you for your comments today.

4 A quick follow-up to Commissioner
5 Narasaki, I also would like people in the future
6 panels to address the qualitative, or otherwise,
7 condition of care between that received inside of a
8 federal or state-run institution versus a privately
9 run institution.

10 We'd like to get some color on that.
11 This goes to Dr. McLearn. Doctor, I chair on the
12 Commission a Subcommittee that is dealing with the
13 family separation and child detention issues at the
14 Southern border.

15 And although I'm not going to ask you
16 to go into quite a lot of detail about that because
17 that's probably a very small subset, it does bring
18 up, I think, a large issue for minority
19 populations, especially newcomers, and no one's
20 more of a newcomer than someone who has just been
21 picked up and taken from their kids at the border.

22 What does the Bureau of Prisons do with
23 regards to ensuring cultural and language access
24 for these folks, some of whom speak dialects from

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1 their native villages that are very difficult even
2 for normal translators to do?

3 How do they explain to them what the
4 circumstances are? And in a follow up to us -- I
5 don't expect you to do this here -- I'd be
6 interested to see what the Bureau of Prisons has
7 done with regards to ensuring that they have
8 information about any children that they may have
9 been separated from? But generally, overall,
10 how are cultural and language access issues, and
11 this could also go towards anyone who may have come
12 in from Asia, from Africa, from Europe, wherever,
13 how are those issues dealt with in the BOP system
14 for women, especially when it comes to the fact
15 that they may be separated from their children for
16 whatever reason?

17 DR. McLEAREN: Thank you for the
18 question, and again, when there's many parts I'm
19 afraid I'm going to miss one, so please push me
20 back if I'm not hitting all of the pieces of it.

21 About 1,300 give or take of the female
22 population that I referenced are going to be non-
23 U.S. citizens at any given time.

24 So those are going to be primarily the

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1 individuals that I think we're referencing here
2 that may not speak the English language, although
3 there could be some overlap there.

4 We have translation services available
5 where somebody -- I don't know if you're familiar
6 with this -- but they're able to use a phone line
7 and call so that they can -- speaking Spanish is
8 very easy at our facilities.

9 We pretty much always have people that
10 are able to speak fluently in Spanish, but other
11 languages that may be less common where we don't
12 have a staff member or an individual on site that
13 can translate, we have a phone service that can
14 assist with that.

15 COMMISSIONER YAKI: Do you know how
16 many languages are supported by that phone service?

17 DR. McLEAREN: I don't but I can find
18 out for you.

19 COMMISSIONER YAKI: Thank you.

20 DR. McLEAREN: We have translated
21 several of our programs for women into Spanish so
22 it is kind of our starting point and the majority
23 of people that don't speak English speak Spanish in
24 our system.

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1 So we have translated and deliver quite
2 a few of those programs. Our big residential drug
3 abuse program that has a gender-specific piece to
4 it or gender-specific program that is different
5 than the male program also has a Spanish language
6 program that women can choose to go to, even if
7 they are more comfortable in Spanish but also speak
8 English.

9 And then you also asked about how we
10 get information about one's children.

11 We would primarily use, before they
12 arrive, the pre-sentence investigation report which
13 is prepared for us by the Administrative Office of
14 the U.S. Court System, the probation officers,
15 which involves a great depth of interview with
16 multiple people, not just the individual coming to
17 prison and generally would lay that out.

18 But then once somebody arrives at the
19 facility, there's an intake and then additional,
20 more intensive we call them team meetings, where
21 the different departments that are involved in an
22 individual's care --

23 COMMISSIONER YAKI: When you talk about
24 the pre-sentence report, you're talking about

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1 people who have been through the full range of the
2 court system, right?

3 DR. McLEAREN: Yes.

4 COMMISSIONER YAKI: Are there other
5 people who are transferred to Bureau of Prisons
6 facilities who have not been through that, i.e.
7 detainees at the border?

8 So they don't have that kind of report
9 so how do you get information on them that would be
10 relevant to their station at that facility?

11 DR. McLEAREN: Okay, it could happen
12 that somebody came in in pre-trial status and we
13 did have very limited data on that individual, that
14 the Marshals or one of our other law enforcement
15 partners brought them to us in a pre-trial capacity
16 where that documentation simply didn't exist.

17 And at that point, we would need to ask
18 the individual and we do. That is part of our
19 process, to gather as much information as possible
20 during an intake screening.

21 COMMISSIONER YAKI: Sure. I don't want
22 to take up too much of the Commission time but what
23 I do want to ask you to follow up with is, is it
24 more than just a phone service?

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1 Are there people detailed at any of
2 these institutions, particularly along the Southern
3 border, who have an understanding not just of the
4 language but of the culture there?

5 Because for someone who has never been
6 in a prison before, who is just picked up at the
7 border, how they're treated, how the whole prison
8 system has a way of dealing with people could be at
9 odds with the culture of how people are treated,
10 touched, spoken to in a different language in a
11 different village.

12 They may come from a small village in
13 the middle of Columbia. So I just want to know if
14 you can get back to me with information about that?
15 That would be very helpful.

16 DR. McLEAREN: I can. I think some of
17 those facilities that you're referencing may be
18 ICE-operated and not Bureau of Prisons facilities
19 so they may be outside --

20 COMMISSIONER YAKI: I'm talking about
21 that there's a whole new set of BOP facilities that
22 have been put up near the Southern border, where a
23 lot of these folks are being transferred to.

24 If I'm wrong, I'm wrong, but then

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1 eliminate me, because I'm just reading what I read
2 in the papers from your own releases that 1,600
3 detainees were sent to BOP facilities.

4 So if you can just get back to me that
5 would be great.

6 CHAIR LHAMON: Commissioner Adegbile?

7 COMMISSIONER ADEGBILE: I'd like to add
8 my thanks to all the panelists for all the
9 important and thoughtful testimony.

10 Ms. McLearen, could you speak to the
11 issue that Professor Salisbury mentioned about the
12 WRNA which, as the professor explained, was
13 conducted -- BOP commissioned a study of its
14 impact. And I'm wondering what is your view of the
15 results of that study?

16 DR. MCLEAREN: Thank you. The National
17 Institute of Corrections is in fact a division of
18 the Bureau of Prisons that is involved in training,
19 and some of them are here in the room today.

20 But the Bureau of Prisons uses a
21 custody classification system that's been validated
22 on our population using data specific to our
23 population. And men and women were evaluated and
24 validated separately. There are different cutting

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1 scores and values applied so that the tool is
2 predictive for women that are in Bureau of Prisons
3 custody. That's primarily to the risk portion
4 although there are need pieces like substance abuse
5 that are woven into that tool.

6 And then we do individualized
7 assessments that I referenced earlier with
8 individuals from there. So that is our current
9 process but I believe people have mentioned that
10 under the First Step Act, we're working
11 expeditiously to implement the provisions of that
12 as required.

13 And there will be a review conducted of
14 various other risk and need assessment tools, then
15 it will be determined what's appropriate for the
16 Bureau of Prisons.

17 COMMISSIONER ADEGBILE: Two follow-ups.
18 First, apologies, it's Dr. McLearen.

19 So Dr. McLearen, was your response to
20 me about the assessments of the existing tools that
21 BOP uses or about the tools that I understand have
22 not been adopted? I was unclear about your
23 response.

24 DR. McLEAREN: I was talking to you

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1 about the Bureau of Prison's current procedures.
2 We do not currently use the women's risk need
3 assessment.

4 COMMISSIONER ADEGBILE: So are you
5 familiar with the results of the study that was
6 referenced or not?

7 DR. McLEAREN: Yes.

8 COMMISSIONER ADEGBILE: What were the
9 results of that study?

10 DR. McLEAREN: That the tool is valid
11 and useful with female populations.

12 COMMISSIONER ADEGBILE: Has the Bureau
13 of Prisons previously analyzed its own tools?
14 Something else that Professor Salisbury said is
15 that she was unaware of BOP analyzing its own
16 classification tool.

17 DR. McLEAREN: The Bureau has most
18 certainly analyzed its own classification tool.

19 COMMISSIONER ADEGBILE: So Professor
20 Salisbury was just mistaken on that one?

21 DR. McLEAREN: I don't want to speak
22 for her, I'm going to let her speak.

23 DR. SALISBURY: I can speak to that,
24 yes. I'm not aware of anything that's been

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1 published in terms of the custody classification
2 tool that's used with female prisoners by the BOP.

3 But I would add is that even the
4 statistical analyses need to be gender-responsive.

5 COMMISSIONER ADEGBILE: Fair enough.

6 DR. SALISBURY: So whether or not that
7 has happened I'm unaware of.

8 COMMISSIONER ADEGBILE: Okay. So I may
9 be missing something but it seems to me that the
10 net result of the testimony that we've heard is
11 that the WRNA is out there.

12 There are some positive indications
13 about how it may contribute to women in custody,
14 and yet, the BOP for some reason that's not
15 entirely clear to me seems to be hesitant to
16 embrace that evidence-based approach.

17 And so I'm wondering if you could just
18 explain to those of us in the room and watching on
19 the Internet why it is that there are indications
20 about a positive path that our United States
21 Government Bureau of Prisons is resistant to?

22 DR. McLEAREN: As I said, we have
23 significant data to support our current approach.
24 I am familiar with this tool, we continually

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1 evaluate our process, and I am happy to take this
2 suggestion back to the agency.

3 COMMISSIONER ADEGBILE: Fair enough, we
4 all can decide what we can decide and I understand
5 that other people have views, but I think that's at
6 the core of one of the issues that we've heard
7 about today.

8 Thanks for your responses.

9 Professor Salisbury and Ms. Mooney, Dr.
10 McLearen, laid out a bunch of items, policies,
11 things that were in place that are sort of a
12 greatest hits of innovation or leading efforts that
13 BOP is engaged in. In my experience, there
14 are challenges that exist as gaps between
15 articulated policies and how policies are
16 implemented on the ground.

17 For example, I would imagine that if I
18 were to ask Dr. McLearen whether the experience of
19 Ms. Winn is consistent with policies, it's my great
20 hope that some of what happened to Ms. Winn and the
21 very difficult circumstances in which she was
22 forced to exist, possibly at the risk of her own
23 life as well as that of her child, are probably not
24 consistent with policies.

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1 Perhaps Dr. McLearn can help me
2 understand if I have that wrong? But I want to
3 hear from you what are the core issues about where
4 the practices are not meeting the policies?

5 Or is it primarily that the policies
6 are just not right?

7 MS. MOONEY: So I've read the Female
8 Offender Manual. That is unique, states often do
9 not have that or it's not well implemented so I
10 think the Federal Bureau of Prisons has done a good
11 job of making progress.

12 But to speak primarily to the states, a
13 problem that we're seeing is that they'll have a
14 policy where women are supposed to be housed in the
15 prison closest to their children, but then you have
16 prison overcrowding.

17 Or you have contracting out to local
18 jails, in which we know often don't provide the
19 same long-term services that women need. So to
20 speak to the state thing, I don't think it's that
21 administrations don't want to do the right thing, I
22 think that often they don't have the funding to do
23 it. We're seeing in Wyoming just this week
24 there's a lawsuit that a couple of women in prison

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1 launched because of unsafe conditions of
2 confinement. You see calls for overcrowding
3 leading to shouts for new prisons in Oklahoma and
4 other states.

5 So I think that the salience of this
6 issue is still not something that governors,
7 members of state legislatures, or even Congress is
8 paying attention to, to really put the adequate
9 funding behind the rehabilitation part and services
10 and alternatives to make sure that the women that
11 don't need to be in the prison system aren't in the
12 first place.

13 I think that's one of the core problems
14 in raising the salience of this issue. And as we
15 know, also making sure that correctional
16 administration are also making sure that their
17 staff are implementing policies is important as
18 well.

19 There was a report, Gender Practice
20 Risk Assessment, I'm getting the title wrong, of
21 Logan Correctional Facility in Illinois that was
22 really interesting to read, where they noticed that
23 although they were trying to form gender-responsive
24 training, correctional staff still held attitudes

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1 that were very hostile towards women, called them
2 derogatory names, didn't buy into the idea of a
3 type of training that responded to unique female
4 needs.

5 So this is still an issue that needs to
6 be translated into practice, but I think that's a
7 cultural and a salience issue as well as a funding
8 issue.

9 MS. WINN: And to add to that, it's the
10 combination of the lack of policies and where there
11 are policies, a lack of implementation by the
12 staff.

13 DR. SALISBURY: Thank you, I'd also add
14 that 90 percent, some research actually shows
15 outside of even criminology, of new initiatives
16 fail not because they're not good initiatives or
17 good ideas but because people or systems don't put
18 an implementation plan in place.

19 So part of the issues and things that
20 I'm literally geeking out on lately is the science
21 of implementation and understanding that we often
22 times in corrections and in lots of different
23 fields focus on the competency drivers of
24 implementation, which means focusing on training

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1 and selecting the right staff and hiring the right
2 staff.

3 We often times call that in my world --
4 we train and pray. We hope that the staff actually
5 take on the things that are discussed in training.
6 But what we don't focus on a lot is the leadership
7 drivers and the other drivers that focus on
8 understanding what it takes to really drive change.

9 And this is something an initiative --
10 it's actually more than initiative.

11 I often times don't like to call it an
12 initiative because then when people say, all right,
13 the initiative's over, to sustain and implement
14 cultural change that we're talking about today is
15 going to take a tremendous amount of funding, it's
16 going to take a tremendous amount of education of
17 staff and of leadership to understand all the
18 myths, that when we say the words gender-responsive
19 and trauma-informed, this doesn't necessarily mean
20 coddling women.

21 It does mean that we can hold women
22 accountable and still provide healing inside
23 institutions and outside institutions.

24 It also means that we have to just

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1 continue to discuss this issue and tie it to
2 performance evaluations of staff, are they actually
3 adhering to what we call gender-responsive and
4 trauma-informed care inside of prisons?

5 But I can tell you that many of us in
6 this room have seen what the solutions look like
7 inside institutions. They can happen but it's
8 going to take a significant amount of effort for
9 the implementation drivers to really be focused
10 upon and move forward.

11 COMMISSIONER ADEGBILE: In your
12 perspective, what are the greatest arguments
13 against embracing the WRNA?

14 There seems to be this gap and so I
15 want to understand that the people that are
16 resisting taking this evidence-based approach,
17 they're probably resisting it for a reason. Is it
18 cost? Is it a philosophical view?

19 DR. SALISBURY: Yes, I think it's cost
20 but I think it's also that many folks feel like,
21 and positions of power about this issue will say
22 that their custody classification tool works good
23 enough. And good is the enemy of great, right?

24 And if we want to really address and

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1 embrace what we know to be state of the art with
2 justice-involved women in terms of the
3 evidence-based and correctional evidence, we have
4 to make sure that we use, of course, the most
5 state-of-the-art risk assessment tools.

6 So part of it is cost, I think part of
7 it is mythology about what we're talking about, and
8 I think a lot of it is just not having that
9 appropriate ethic of care of starting with women in
10 mind.

11 COMMISSIONER ADEGBILE: Madam Chair,
12 can I sneak in one more quick --

13 CHAIR LHAMON: This is your last one.

14 COMMISSIONER ADEGBILE: Okay, a very
15 thoughtful panel. Ms. Owens, to what extent is the
16 evolving science of trauma impacting how we treat
17 our prisoners, our female prisoners?

18 It seems to me that the science is
19 growing in that area, the understanding of the
20 going-forward effects of trauma. And how central
21 is this in BOP's approach and perhaps in the state
22 approaches?

23 MS. OWENS: I would say it's very
24 important.

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1 What we're doing now, having this
2 conversation but also having conversations with
3 leadership and hearing from formerly incarcerated
4 women such as Pam and others, the education behind
5 it forces the narrative and forces communication,
6 and forces policy change, legislative change, and
7 then implemented it.

8 A lot of people that I talk to, members
9 of the state and federal level, don't believe that
10 certain things happen behind bars. And a lot of
11 the things that I talk about they think are already
12 in place.

13 So again, just educating them on 60
14 percent of women have substance abuse problems,
15 about 80 percent to 90 percent of women have
16 already been sexually assaulted before even
17 entering the prison system.

18 And so when we think about that and
19 then adjust that to members and also just
20 advocates, then that's when we get the policy
21 changes put in place, and we see it across the
22 stage right now.

23 ACU is in eight target states this year
24 and last year we have seen tremendous growth with

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1 addressing the trauma-related needs of women.

2 MS. MOONEY: To speak to the science,
3 if I can butt in for a second, there's been really
4 some good research coming out of UCLA that talks
5 about how women respond psychologically different
6 and they have created this term of the tend-and-
7 befriend approach, in which in instances of trauma
8 - we're very familiar with flight or fight - women
9 tend to nurture and to care for their young ones
10 and to befriend and use that social component to
11 relieve that stress and that PTSD.

12 So I think that's really important to
13 underscore why in instances such as Pam's, when
14 she's placed in solitary confinement after the loss
15 of her child, how that is so antithetical to the
16 rehabilitative notion of giving someone a social
17 outlet.

18 And I think this also ties into how
19 instances and responses to disciplinary
20 infractions, if a woman's talking too loudly,
21 something like that, that might actually be just a
22 response to their instance of a trauma and how they
23 are trying to seek comfort and coping.

24 So I think that's really important,

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1 there's some really good psychology, sociobiology
2 literature that's coming out of UCLA in particular,
3 that deals with how psychologically women and men
4 differ.

5 COMMISSIONER ADEGBILE: Thank you.

6 CHAIR LHAMON: So I know Commissioner
7 Kladney has a set of questions he's chomping to ask
8 but I have a few of my own so I'm going to try to
9 go quickly through them and still save time for
10 him.

11 Dr. McLearen, I really appreciated your
12 testimony about recent changes to BOP manuals that
13 sound quite welcome. There is one that I don't
14 welcome and so I wanted to hear from you about
15 what's happening.

16 And that is a recent change to the
17 Transgender Offender Manual, which instructs the
18 BOP to make housing decisions based on the
19 biological sex at the initial determination rather
20 than what the previous manual had said, which is
21 that housing should be in accordance with gender
22 identity.

23 So, I wonder if you could speak to the
24 rationale for making that change and how it is

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1 being implemented?

2 And I would like to say that I hope
3 you'll speak to us against the backdrop of an
4 enormously distressing article that the Vice Chair
5 shared with me yesterday from North Carolina, which
6 I realize is not one of your prisons, but a
7 transgender woman who is housed in a men's prison
8 and is talking about the fear and the danger she
9 experiences every day.

10 That is, I imagine, not distinct from
11 what transgender women would experience in the BOP
12 as well.

13 DR. McLEAREN: Thank you for the
14 opportunity to talk about this important issue.
15 Our transgender population in the Bureau of Prisons
16 is large.

17 The way we define transgender, just so
18 that we're adhering to that nuance, is that an
19 individual gets to self-identify. So that's who
20 I'm speaking to, and we have over 700 individuals
21 that identify as transgender.

22 The vast majority of those individuals,
23 about 80 percent, are individuals who were assigned
24 to the male sex at birth. The change in the

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1 Transgender Offender Manual is quite small and it
2 was simply made to clarify the importance of safety
3 and a variety of factors in looking at
4 designations.

5 In terms of what we consider, though,
6 we still consider an individual's wish as to where
7 they wish to be housed, the safety of that
8 individual, the safety of other individuals, and so
9 the sex assigned at birth is simply a starting
10 point.

11 We usually have a great deal more data
12 beyond that. That's just a starting point.
13 Internally, our process is a Transgender Executive
14 Council that I sit on along with general counsel,
15 health services, psychiatry, psychology, and our
16 correctional services people.

17 Every single decision we make is made
18 through the lens of safety. That is our priority,
19 and the safety of that individual and safety of
20 everybody else.

21 CHAIR LHAMON: That's enormously
22 comforting. Can you explain what the genesis of
23 the change in the manual was, given that you make
24 these careful and detailed determinations that are

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1 not necessarily in accord with that initial
2 determination?

3 DR. McLEAREN: It was simply a
4 clarification.

5 CHAIR LHAMON: It's not really a
6 clarification to change 100 percent of the policy.

7 DR. McLEAREN: 100 percent of the
8 policy didn't change.

9 CHAIR LHAMON: It's 100 changed in that
10 element. So it used to be that housing was in
11 accordance with the gender identity, and now it is
12 the initial decisions were made based on biological
13 sex as the initial determination.

14 DR. McLEAREN: When I say
15 clarification, I think what I'm trying to get at is
16 that was always the starting point, that was always
17 the first place that we looked, unless someone had
18 completed surgery, in which case they had a new
19 gender and were no longer transgender, they were
20 post-surgical.

21 That was always the starting point and
22 so it just made that a little bit more clear, that
23 in the absence of other information this would be
24 the starting place for an individual but that would

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1 always be the case.

2 And then when we have additional
3 information about somebody's transition, about
4 their compliance with hormones or whether they're
5 taking them, about their mental health functioning
6 and programming.

7 And what their interest area is in
8 terms of some people prefer to stay at a particular
9 facility and we wouldn't want to make a move that
10 they didn't support.

11 CHAIR LHAMON: Thank you.

12 Dr. Salisbury, you included in your
13 written testimony very compelling information about
14 the effects of a Department of Justice
15 investigation into an Alabama prison and what
16 followed from that. And I wonder if you have
17 other information about the benefits of the effects
18 of Department of Justice's investigation need to
19 also currently pending investigations from the
20 Department?

21 DR. SALISBURY: Thank you.

22 Yes, I think that DOJ investigation has
23 been incredibly important in actually setting
24 precedents for understanding that we need to have

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1 gender-responsive and trauma-informed care and
2 policy and people who obviously understand the
3 issue.

4 I know you're going to be hearing
5 testimony later this afternoon and throughout the
6 rest of the day about specifically what's going on
7 in Alabama, so I'll reserve my comments to what I
8 know. I wasn't heavily involved in that DOJ
9 investigation so I can't really speak to it but I
10 will say that the fact that that investigation
11 happened and that Alabama, as I understand it, is
12 complying with nearly every part of the provisions
13 of that consent decree is incredibly important for
14 other states and for the BOP to really take a hard
15 look at.

16 Because obviously it's pending
17 litigation if other states don't address it.

18 CHAIR LHAMON: Thank you.

19 And Ms. Mooney, in this age of social
20 media, I saw on Twitter yesterday that you tweeted
21 about a state statute or a bill passed out of a
22 state legislature that would require --

23 MS. MOONEY: So it was just out of the
24 house. It hadn't passed in the Senate yet, to

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1 clarify.

2 CHAIR LHAMON: So you know your tweet,
3 thank you. But it was about a requirement to
4 consider best interest of a child before parental
5 rights are terminated because a parent is
6 incarcerated.

7 And I wonder if you could speak to the
8 value of that recommendation, I take it you liked
9 it because you tweeted it, and what you think would
10 be beneficial as a change in policy on that front.

11 MS. MOONEY: Some states have included
12 provisions that disallow the termination of
13 parental rights specifically for a parent's
14 incarceration, however, it really varies incredibly
15 by state to state.

16 In other states there might be certain
17 communication or contact policies that a parent
18 needs to meet, but frankly, correctional agencies,
19 social service agencies, don't often do a great job
20 of communicating.

21 So a social worker might not even know
22 in what prison a parent's located. A prisoner
23 might feel ashamed of having a child in foster care
24 and might not let the correctional system know.

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1 So some states have done a good job of
2 starting to integrate that data sharing and that
3 communication, but many have not.

4 So I guess the ideal policy change
5 would be including that specifically in statute,
6 that parental incarceration alone is not adequate
7 means to terminate parental rights.

8 However, I'm sure some child welfare
9 professionals might push back a little bit because
10 if a parent is practically incarcerated for ten
11 years, it is hard for me at least to say that I
12 would know what the best interests of the child are
13 in that case.

14 But it's to just really ensure that at
15 the least, at the minimum, unless that child is in
16 danger of harm, that the parental and child
17 relationship is being supported, which we're seeing
18 right now that that's not always the case.

19 CHAIR LHAMON: Thank you.

20 I said that was my last question but I
21 lied, I have a new question that just got handed to
22 me, which is, Dr. McLearn, could you speak to what
23 the Bureau of Prisons is doing to ensure that state
24 prisons follow the PREA, especially regarding anti-

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1 shackling and feminine hygiene products guidelines?

2 DR. McLEAREN: The Bureau of Prisons
3 does not have oversight or enforcement of state
4 facilities so we can't do anything to ensure
5 compliance-- that would be other parts of the
6 Department of Justice that would be involved in the
7 oversight of PREA.

8 We can only make sure that we are
9 following PREA in the Federal facilities and we
10 are. I used to be the national PREA coordinator
11 and was there when we developed the policies
12 shortly after the standards were issued in 2012.

13 We worked very closely with our
14 partners in the Department of Justice as well as
15 many of the external groups, advocacy groups, and
16 justice experts, the PREA Resource Center, and we
17 remain involved in answering detailed questions
18 that have considerable nuance.

19 That information then goes out to the
20 states for guidance. I hope that captures that.

21 CHAIR LHAMON: It does, thank you. So
22 you have two minutes, Commissioner Kladney.

23 COMMISSIONER KLADNEY: Thank you, Madam
24 Chair. I'll ask my 15 questions as quickly as

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1 possible.

2 Ms. Mooney, just quickly, I know in my
3 state when there's termination cases the woman is
4 assigned a lawyer and is also transported to court
5 for a hearing.

6 Is that the way it is in every state?

7 MS. MOONEY: I will not say that I know
8 in every state whether or not that's the case. I
9 think that's the intention of many state statutes.

10 Whether or not that's always able to
11 happen or there's proper notification and the
12 follow-through is there I am unsure.

13 CHAIR LHAMON: I just see a panelist
14 shaking a head behind you so perhaps we'll hear
15 more about that in a later panel. Let the record
16 reflect that there's head-shaking as if it's no.

17 COMMISSIONER KLADNEY: Okay, thank you.
18 Dr. McLearn, I was wondering the BOP does not use
19 BFOQs, do they?

20 DR. MCLEAREN: We do not, no.

21 COMMISSIONER KLADNEY: Does anybody on
22 the panel have an opinion as to whether they should
23 be used in certain positions within institutions?

24 DR. SALISBURY: Yes, so thank you for

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1 the question. I served as an expert witness and
2 provided expert testimony, written testimony, to a
3 case in Washington State with the Washington State
4 Department of Corrections.

5 They, I want to say, had BFOQs for
6 about 100 positions, I want to say 90 to 100
7 positions, in women's prisons that were basically
8 the private areas, the showering areas, inside the
9 prisons.

10 And the union sued the Washington DOC
11 for having those BFOQs and I will say the judge
12 actually gave summary judgment that sided with the
13 Washington Department of Corrections for having
14 those BFOQs.

15 And so, again, there is a legal
16 precedent there that has been set to have those
17 BFOQs in place.

18 COMMISSIONER KLADNEY: So you would say
19 they are a positive in women's institutions?

20 DR. SALISBURY: Absolutely, given the
21 amount of sexual assault that women have
22 experienced and where typically these things happen
23 in terms of sexual assaults that happen inside
24 prisons, yes, I would fully support that.

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1 COMMISSIONER KLADNEY: Dr. McLearen,
2 could you explain your division's role in selecting
3 wardens for female facilities?

4 DR. McLEAREN: Thank you for the
5 question. My branch has four primary
6 responsibilities, engagement with stakeholders,
7 many of whom have been consultants --

8 COMMISSIONER KLADNEY: I'm actually
9 running out of time.

10 DR. McLEAREN: I'll talk fast.
11 Training, policy, and programs. We are not
12 involved in staff selection so those selections are
13 made by the executive staff which is the senior
14 governing body of the agency --

15 COMMISSIONER KLADNEY: Is there special
16 training required for those positions as being a
17 warden?

18 DR. McLEAREN: Anyone that works at a
19 female institution has to complete the same basic
20 training that we referenced earlier, all of the
21 corrections training and then a special module on
22 trauma-informed care and on working with females in
23 prison.

24 COMMISSIONER KLADNEY: Does the

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1 executive staff have knowledge and experience with
2 female offenders outside of your division?

3 DR. McLEAREN: The executive staff is
4 made up of about 15 individuals that all represent
5 different divisions with a wealth of correctional
6 knowledge so I would be hesitant to go into their
7 backgrounds but I can certainly get you their
8 backgrounds.

9 COMMISSIONER KLADNEY: Okay, I
10 appreciate that.

11 And finally for the panel, do you think
12 it would be helpful for the Commission if we could
13 visit a female institution and actually go to lunch
14 and be in solitary confinement for about 15
15 minutes.

16 MS. MOONEY: I would recommend visiting
17 a state and federal institution, maybe as well as a
18 jail.

19 MS. WINN: I agree but there's one
20 problem with that. When third parties come into
21 visit, they make sure anybody that's going to speak
22 up or say what's really going on is not able to
23 even get close to the people that come in.

24 DR. SALISBURY: I would also say that

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1 you do more than a tour, right, and that you
2 actually spend time speaking with women who are
3 incarcerated and deciding for yourselves who you're
4 going to speak to, and not allow leadership inside
5 of an institution to dictate who you talk to.

6 DR. McLEAREN: I would second that
7 suggestion and we have and we have and do allow
8 people to come inside of federal facilities and
9 talk to the women that they wish to talk to so we'd
10 be happy to host that.

11 COMMISSIONER KLADNEY: So we could just
12 hang out there?

13 DR. McLEAREN: In a manner of speaking.

14 COMMISSIONER KLADNEY: Because I
15 understand you only have seven maximum security
16 women and the rest are low and minimum, is that
17 correct?

18 DR. McLEAREN: That's correct.

19 CHAIR LHAMON: And with that, this
20 panel is going to conclude. I thank each of the
21 panelists for your testimony and we will come back
22 at 10:50 a.m. to begin on Panel 2.

23 Thanks very much.

24 (Whereupon, the above-entitled matter

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1 went off the record at 10:43 a.m. and resumed at
2 10:52 a.m.)

3 **PANEL TWO - ANALYSIS OF WOMEN'S HEALTH, PERSONAL**
4 **DIGNITY, SEXUAL ABUSE IN THE U.S. PRISON SYSTEM**

5 CHAIR LHAMON: We're coming back to
6 order now as it's 10:51 a.m. We're going to
7 proceed with our second panel, which is titled an
8 Analysis of Women's Health, Personal Dignity, and
9 Sexual Abuse in the U.S. Prison System.

10 Again, given some of the topics that
11 come up with regards to women in prison, I remind
12 our panelists and the public and my fellow
13 Commissioners that since 1983, Congress has
14 prohibited the Commission from taking in or serving
15 as a clearinghouse for information about abortions.

16 Please tailor your remarks accordingly.
17 My mic is on and I'll lean in towards it.

18 In the order in which they will speak,
19 our panelists are Julie Abbate, National Advocacy
20 Director of Just Detention International, Andie
21 Moss, Founder of the Moss Group, Dr. Jamie Meyer,
22 Assistant Professor of Medicine and Assistant
23 Clinical Professor of Nursing, Yale University
24 School of Medicine, Dr. Carolyn Sufrin, Assistant

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1 Professor of Gynecology and Obstetrics, Johns
2 Hopkins School of Medicine, Betsy Ginsberg,
3 Clinical Associate Professor of Law and Director of
4 the Civil Rights Clinic at Cardozo School of Law,
5 and Brenda V. Smith, Professor of Law, Senior
6 Associate Dean, American University Washington
7 College of Law and Former Commissioner, National
8 Prison Rape Commission, Director of Project on
9 Addressing Prison Rape.

10 Ms. Abbate, please begin.

11 MS. ABBATE: Thank you. Good morning
12 and thank you so much for the opportunity to speak
13 to you all today. And especially to address the
14 topic of sexual abuse of women prisoners.

15 I recently started my position as the
16 National Advocacy Director for Just Detention
17 International, which is a health and human rights
18 organization whose sole mission is ending sexual
19 abuse in all forms of detention.

20 But my experience with custodial sexual
21 abuse of women prisoners started in 1993 when I co-
22 counseled a class action suit with Brenda Smith at
23 the end of the table, Women Prisoners v. The
24 Department of Corrections for D.C. here in the

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1 District.

2 And that case established that the
3 women prisoners here in D.C. had their Eighth
4 Amendment Rights violated by staff rape and staff
5 sexual harassment that rose to the level of a
6 constitutional violation.

7 More recently, until May of last year I
8 was the Deputy Chief in the Special Litigation
9 Section, Civil Rights Division of the U.S.
10 Department of Justice. It was there that I focused
11 on the Civil Rights of Institutionalized Persons
12 Act enforcement. I ultimately led the
13 corrections practice group which was focused on
14 implementing the CRIPA Act. Also at DOJ I was a
15 member of the Attorney General's PREA Working Group
16 which ultimately wrote and drafted the final PREA
17 standards on detecting, preventing, and addressing
18 prison rape in our jails and prisons.

19 And as I discussed further in my
20 written testimony, each of those methods of
21 combating sexual abuse can be effective, yet each
22 is really significantly limited.

23 Private Eighth Amendment litigation is
24 primarily limited by the Prison Litigation Reform

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1 Act, barriers to access to courts, and by the issue
2 of consent, and I put that word in air quotes and
3 in actual quotes whenever I write it.

4 And because it's apparently difficult
5 to believe one single woman's experience of being
6 sexually abused in prison, single plaintiff cases
7 as opposed to class action cases appear to have
8 even more difficulty overcoming this issue of
9 consent.

10 Both types of litigation-- single
11 plaintiff and class action-- often take years to
12 even get to a finding of liability and longer still
13 to implement remedies. CRIPA investigations have
14 to overcome that same consent hurdle even before
15 they get out of the Department of Justice.

16 And I should note that in all my
17 dealings with jurisdictions in CRIPA cases of
18 sexual abuse, not one jurisdiction or agency has
19 actually raised the defense of consent in
20 negotiating those settlements. Also, DOJ
21 brings far too few CRIPA investigations to have a
22 meaningful impact on women prisoner's sexual
23 safety. There have been far too few CRIPA
24 investigations of any conditions of confinement in

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1 any jails or prisons in general.

2 Between fiscal years 2010 and 2018, the
3 Special Litigations Section opened an average of
4 just two CRIPA investigations into jails and
5 prisons per year. PREA has great potential but
6 it's also super problematic because there's no real
7 enforcement mechanism.

8 States face the potential loss of 5
9 percent of certain federal funds for not
10 implementing the PREA standards. And the PREA audit
11 system has been flawed. There are steps to correct
12 it but it has been flawed.

13 Audits were supposed to provide
14 reliable information about a facility's pre-
15 implementation but it has not. DOJ has
16 strengthened the auditing system in 2017 but
17 inaccurate and unreliable audits still exist.

18 And the real danger is that poor audits
19 can provide a false sense of security and people,
20 including advocates, tend to take those audits at
21 face value. Even when facilities legitimately
22 receive passing audits, they can still have
23 problems with prisoner sexual safety and even
24 problems that violate prisoners' constitutional

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1 rights.

2 And like I said, PREA does offer hope
3 for women prisoners' sexual safety as a starting
4 point, but women's prisons that implement PREA
5 without also instituting the gender-responsive and
6 trauma-informed programs and practices we've been
7 hearing about will not adequately address women
8 prisoners' sexual safety. Culture change
9 is crucial and the preamble to PREA recognizes
10 this. It states the success of the PREA standards
11 in combating sexual abuse in confinement facilities
12 will depend on effective agency and facility
13 leadership and the development of an agency culture
14 that prioritizes efforts to combat sexual abuse.

15 Effective leadership and culture
16 cannot, of course, be directly mandated by rule yet
17 implementation of these standards will help foster
18 a change in culture by institutionalizing policies
19 and practices that bring these concerns to the
20 fore.

21 And in women's prisons that must be
22 done through a gender-responsive lens. So what
23 works in women's prisons?

24 What works is to change the culture in

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1 women's prisons, to change the way that staff
2 interact with women prisoners, to institute the
3 evidence-based, gender-responsive, trauma-informed
4 practices that most, if not all, of today's
5 panelists will discuss directly or indirectly.

6 Because even when litigation or CRIPA
7 investigations, even when they work and establish
8 liability for constitutional violations, that's
9 when the real work begins, the real work of
10 implemented sustainable culture change.

11 In my experience, establishing the
12 pattern of practice violation was never the hard
13 part. The hard part was figuring out the solution.
14 The starting point should be to identify the
15 systemic weaknesses that facilitated abuse and the
16 cultural problems at each facility that allowed the
17 abuse.

18 In each of the eight investigations
19 spanning eight states where I've worked on
20 different sexual abuse cases for women prisoners,
21 and one for transgender women housed in men's
22 prisons statewide in the State of Georgia, the
23 biggest risk population to be in is a transgender
24 woman in a men's facility that does not recognize

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1 their proven vulnerabilities.

2 At any rate, the cultural differences
3 range from the stereotypically harsh and punitive
4 abusive culture to a culture of apathy to an overly
5 familiar and even friendly-seeming culture that
6 allowed at least two serial sexual predators to
7 openly groom their victims without raising any red
8 flags, and allowed one of them to rape and sexually
9 abuse numerous women for years.

10 So those types of cultures don't
11 develop overnight and they're not going to be fixed
12 overnight.

13 Creating remedies has to include taking
14 the time to work with a jurisdiction to develop
15 solutions that will work for that facility, its
16 staff and its prisoners, and identify the specific
17 issues that need to be remedied.

18 It can't be done exclusively by
19 attorneys but you must include practitioners who
20 know what can be done and what will be done. And
21 agreements need to be drafted to ensure success.

22 Jurisdictions deserve credit for their
23 progress to feel like their efforts are being
24 recognized. The biggest challenge to successful

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1 culture change is sustainability. Change cannot be
2 driven solely by a few individuals.

3 Effective change requires support from
4 the very top including Commissioner level, governor
5 level. Few people in those top positions
6 understand what women prisoners need.

7 The most important safeguard is to have
8 upper-level permanent positions created to oversee
9 women prisoners, whose decisions and policies are
10 implemented without being second-guessed or
11 overruled by people who do not understand how to
12 safely run women's prisons or how to support women
13 prisoners.

14 CHAIR LHAMON: Thank you, Ms. Abbate.
15 Ms. Moss?

16 MS. MOSS: I just thanked you.

17 (Laughter.)

18 CHAIR LHAMON: We definitely want to
19 hear that.

20 MS. MOSS: My name is Andie Moss, and
21 my position today is informed by over three decades
22 of working as correctional practitioner and
23 consultant. My early work in Georgia, living on
24 prison grounds in a massive reform effort, doing a

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1 large lawsuit addressing staff sexual misconduct
2 and general conditions, really projected the arc of
3 my career.

4 I went from that experience to the
5 National Institute of Corrections, where I chaired
6 the Women's Initiative for the Institute. During
7 that period of time, we conceptualized and built
8 the gender-responsive principles that NIC has
9 distributed throughout the country.

10 After 20 years in state and federal
11 government, I saw a real need to support the field
12 with these similar efforts. And so I started the
13 Moss Group, with a mission to build cultures of
14 safety and be a trusted partner in doing that with
15 the corrections practitioners.

16 I'm a partner with the National
17 Resource Center of Justice Involved Women, and the
18 PREA Resource Center. Dr. Salisbury talked about
19 the last 50 years. I've ridden 38 of those years,
20 and so I bring many voices and stories with me as I
21 speak.

22 I'm particularly honored to share in
23 this panel with colleagues who've been instrumental
24 in this long journey, particularly to address

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1 sexual abuse in confinement. Three of us worked on
2 major lawsuits 24 years ago addressing these
3 issues. To give people context for that, it was
4 before email, before websites, and before Google.

5 I wish that I could have emailed Judith
6 Resnik during those days, or reached out to a Julie
7 Abbate. I did find early on the collegiality with
8 Brenda Smith.

9 Though there is still not enough
10 research, there has never been a time that so much
11 research and practitioner-based understanding is
12 available. That's the good news. The question for
13 today is to what degree does this body of knowledge
14 impact justice for incarcerated women?

15 Is the federal response to women
16 involved in the criminal justice system adequate to
17 spread this knowledge and ensure the administration
18 of justice?

19 My written response provides context
20 and examples that support my position. My position
21 is this: Federal assistance has contributed to the
22 development of research tools and many training
23 opportunities for correctional staff that support a
24 gendered approach. This was particularly true in

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1 the 90s until recent years.

2 But the current federal assistance and
3 focus on women has become very limited, resulting
4 in stalled efforts and creating safety and dignity
5 for the women and staff who serve them. Because of
6 these limited resources, we are losing momentum and
7 the implementation of sorely needed strategies that
8 support justice-involved women and their successes.

9 It is impossible to exaggerate the
10 importance of federal assistance. When federal
11 agencies focus on an issue, it elevates the
12 urgency, or at least makes the statement that it
13 matters. This was true in years of work at the
14 National Institution of Corrections in implementing
15 training and strategies and assisting states with
16 developing laws addressing staff sexual misconduct.

17 The issue became named. This was pre-
18 PREA. We know now that implementation of PREA is
19 taking years, it's social practice that we're
20 changing. But there are many lessons learned that
21 speak to the implementation concerns that Dr.
22 Salisbury has brought forward.

23 Gender-responsive principles have been
24 a very important core strategy to work with the

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1 field. Those principles were developed because
2 there was federal assistance given to NIC during
3 the time of the early 90s and mid-90s.

4 There are few systems that sustain a
5 management structure that creates continuity and
6 internal advocacy for women, such as Dr. Williams's
7 position in Alabama. It would be difficult to find
8 more than a half dozen strategic plans on a state
9 level for women's services. This is why federal
10 assistance is so important.

11 The National Institute of Corrections
12 has a program called Agency Planning. Teams of
13 practitioners can go to that program and begin
14 developing strategic plans. The NIC has very
15 limited funding to implement that program.

16 Like many professions, senior-level
17 staff with expertise are leaving at a rapid rate,
18 and the transfer of knowledge is challenging,
19 particularly when there is such a small number of
20 senior-level managers with any knowledge of gender-
21 responsive work with women.

22 Wardens assigned to women's facilities
23 are often starting without a knowledge base of any
24 gender-responsive approach. Transformative

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1 training, which has been referred to around
2 creating a trauma-informed approach, couldn't be
3 more critical. It is not one-off training, and it
4 is not specifically programmatic.

5 All staff and all women in a facility
6 need to be trained in a trauma-informed approach.
7 In addition, operational practice must be
8 considered within that approach. Secondary trauma
9 for staff is real. If we don't train staff and
10 with tools to develop and shift in terms of their
11 own self-care, we have brokenness plus brokenness
12 with the women. Brokenness plus brokenness equals
13 brokenness.

14 This work is critical, and if we want
15 reporting cultures in addressing sexual abuse, we
16 have to have cultures that are hope-based and not
17 fear-based.

18 There are many points I want to make,
19 but I am aware that my time is running out, and I
20 look forward to our questions. What I would like
21 to suggest is some concrete funding
22 recommendations.

23 We recommend funding for, reinstate the
24 funding for the National Women's Resource Center of

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1 Justice Involved Women. Fund NIC to increase
2 outreach to the field, particularly in short-term
3 technical assistance. And allocate target --
4 technical assistance to implement the PREA
5 standards through a gendered lens.

6 Fund research focused on understanding
7 women's relationships in correctional settings.
8 Recommend a national meeting and encourage a
9 network of administrators of women's services and
10 key subject matter experts and stakeholders.
11 Provide federal agencies presentations on a gender-
12 responsive model practice.

13 Work with professional organizations
14 such as the Association of State Correctional
15 Administrators. Encourage an interagency work
16 group. These issues are critical,
17 but they are also urgent issues. Thank you for
18 your time.

19 CHAIR LHAMON: Thank you, Ms. Moss.
20 Dr. Meyer.

21 DR. MEYER: Good morning, and thank you
22 for the opportunity to speak to you all today. My
23 name is Jaimie Meyer, I'm a physician specializing
24 in infectious diseases and addiction medicine. I'm

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1 faculty on the Yale AIDS program.

2 And the majority of my clinical work
3 and clinical research is about HIV prevention and
4 treatment for women involved in criminal justice
5 systems.

6 So here's what I see as kind of some
7 key problems. First is that prisons and jails were
8 not designed to deliver healthcare, and so the
9 missions of prisons to punish, sometimes to
10 rehabilitate, and perhaps to protect public safety,
11 are often at odds with the idea of delivering
12 compassionate, comprehensive care to the people in
13 their custody.

14 Secondly, prison systems were designed
15 primarily by and for men, so the unique needs of
16 women are often ignored, one of the many reasons
17 why I'm excited to participate in the briefing
18 today.

19 That being said, the provision of
20 healthcare during incarceration is constitutionally
21 protected under the Eighth Amendment, and it says
22 that we cannot practice deliberate indifference to
23 women's needs.

24 And that's really important, because

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1 women in the criminal justice system have multiple
2 complex medical, psychiatric, and social needs that
3 cannot be ignored. And those needs are more
4 complex than those of men in prison, and they're
5 more complex than those of women in the community.

6 And they include, among many, HIV;
7 chronic Hepatitis C; sexually transmitted
8 infections; substance use disorders; psychiatric
9 disorders, particularly post-traumatic stress; and
10 homelessness. And these conditions are not gender-
11 neutral.

12 So while the diagnosis and management
13 of some of these conditions might be the same for
14 men and for women, the unique experience of living
15 with these conditions is very different for women.

16 And these conditions need to be
17 addressed during incarceration, both for the
18 individual health of women, but also for public
19 health. Because the majority of people return to
20 communities every year.

21 So care for women needs to be evidence-
22 based, and it needs to be equivalent to that
23 available in the community. So think about what
24 that might mean in terms of HIV. One in seven

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1 people living with HIV in the United States pass
2 through the criminal justice system every year.

3 And twice as many women in prison have
4 HIV than men in prison, and many more experience
5 extraordinary HIV risk because of their substance
6 use and their engagement in high risk sex in the
7 community.

8 Therefore, people in prison and women
9 in particular are a high, key target population for
10 HIV prevention, really critical to these goals of
11 ending HIV transmission by 2030 that the President
12 spoke about in his State of the Union address.

13 So the CDC talks about the HIV care
14 continuum. And it says that first people have to
15 be diagnosed with HIV. And that means that on
16 entry into prisons and jails, everyone should
17 receive routine, opt-out HIV testing so they're
18 aware that they're living with HIV and can get
19 treated. But this is rarely done.

20 People who test positive for HIV then
21 need to have care rapidly available and initiated,
22 including treatment with anti-retroviral
23 medications. And this is important not only for
24 individual, but also for public health. Because

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1 when people have their HIV effectively treated,
2 they are unable to transmit the virus to others.

3 For people who HIV test negative, we
4 need to think of prisons and jails as a moment of
5 opportunity to educate people about HIV prevention.
6 And that means psycho-educational approaches, as
7 well as linkages to HIV prevention medications,
8 known as PrEP.

9 Let's think about what evidence-based
10 and equivalent means in terms of substance use
11 disorders. So according to the Bureau of Justice
12 Statistics, up to 96% of women in state prisons and
13 72% of women sentenced in jails meet criteria for
14 severe substance use disorders.

15 Yet fewer than 10% ever receive
16 treatment with medication-assisted therapy, which
17 is evidence-based. Only 14 states currently offer
18 medication-assisted therapy for people in prisons
19 and jails.

20 So care needs to be comprehensive and
21 woman-centered. And that includes screening and
22 diagnosis, supportive care for withdrawal,
23 effective behavioral therapies, and medication-
24 assisted treatment, all of these things packaged

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1 together.

2 Abstinance-only approaches do not work.
3 People have very high risk of relapse after return
4 to communities, portending high risk of overdose
5 and recidivism.

6 Care also needs to be continuous and
7 integrated. So for chronic health conditions,
8 continuity of care is best maintained when people
9 are out in the community. But when alternatives to
10 care are not possible, care needs to be integrated
11 on intake into prisons and jails throughout
12 incarceration, including on inter-facility
13 transfers and on transition back to communities.

14 And this means that providers need to
15 have a way to communicate. They need to be able to
16 coordinate care in a way that is seamless. People
17 need continuous access to medications and
18 continuous access to health insurance, particularly
19 on transition back to communities.

20 As many others have talked about, care
21 needs to also be gender-responsive. The World
22 Health Organization defines gender-responsive care
23 as a quality of care framework that really puts
24 gender at the center of program planning, staff

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1 capacity building, access to participation and
2 monitoring of services, and advocacy.

3 And as many others have also talked
4 about, care needs to be trauma-informed. The
5 majority of women in prisons and jails have
6 experienced lifetime trauma and that has a very
7 broad impact on their lives.

8 So we need to acknowledge signs and
9 symptoms of trauma and integrate that knowledge
10 into all policies and procedures, with particular
11 attention to safety and security, to avoid re-
12 traumatizing women, their families, and staff.

13 So just in the couple seconds I have
14 left here, I'll just say again, my belief is that
15 healthcare for women in prison should be evidence-
16 based, should be equivalent to that available in
17 the community, should be continuous and integrated,
18 gender-responsive, and trauma-informed. And in
19 that way, care is not only made effective, but also
20 meaningful. Thank you.

21 CHAIR LHAMON: Thank you very much, Dr.
22 Meyer. Dr. Sufrin.

23 DR. SUFRIN: Good morning, and thank
24 you for the opportunity to speak to the Commission.

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1 My name is Carolyn Sufrin, I'm an
2 obstetrician/gynecologist and researcher at Johns
3 Hopkins School of Medicine.

4 I provide clinical care to incarcerated
5 women, conduct research on their reproductive
6 healthcare needs, and advise prisons and jails
7 across the country.

8 I'll focus my remarks this morning more
9 specifically on the reproductive health status of
10 and needed healthcare services for incarcerated
11 women.

12 In particular, I want to emphasize that
13 the inadequate reproductive healthcare that exists
14 for them, coupled with the continued rise and
15 racial disproportionality of incarcerate women, is
16 one of the most flagrant violations of the human
17 rights and equity principles of reproductive
18 justice of our time.

19 Some of the written testimonies cited
20 statistics that 3-5% of incarcerated women are
21 pregnant, that 1500 to 2000 births happen to women
22 in custody each year. And while my esteemed
23 panelists are citing the only available evidence,
24 the truth is that these statistics are inaccurate.

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1 They are decades old and limited in
2 scope and methodology. We actually have no idea
3 how many pregnant incarcerated women there are and
4 what happens to these pregnancies.

5 The Centers for Disease Control and
6 Prevention rigorously and routinely collects
7 national statistics on pregnancy outcomes in the
8 US, but their statistics do not account for
9 incarceration status.

10 The Bureau of Justice statistics
11 rigorously and routinely collects national
12 statistics on incarcerated people and their
13 demographics, but they do not collect any
14 information about pregnancy. This is a profound
15 elision.

16 Women who don't count don't get
17 counted. That is, the lack of any comprehensive or
18 updated statistics about pregnancy among women
19 behind bars signals the systematic disregard in the
20 carceral system, and indeed our country, for
21 incarcerated pregnant people.

22 My research team at Johns Hopkins will
23 soon, in three weeks, publish the results of a
24 study we conducted from 2016 to 2017 of pregnancy

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1 outcomes in all federal and 22 state prison
2 systems. In our study, there were nearly 1400
3 admissions of pregnant women and over 750 live
4 births.

5 But this is only a proportion of the
6 state prisons, as well as all federal prisons. Six
7 percent of the pregnancies ended in miscarriage.

8 This paucity of data means that no one
9 is paying attention. Anything can happen to them,
10 as Ms. Winn movingly and harrowingly described.
11 They can be placed in solitary confinement,
12 shackled, they can receive sub-standard pregnancy
13 care and nutrition, their symptoms of contractions
14 or bleeding may be ignored.

15 They can be forced to detox from
16 opioids, even though this violates the clear
17 medical standard of care that they should be on
18 medication-assisted treatment. These are all
19 things that erode their dignity and lead to my
20 patients' suffering.

21 While the First Step Act recently
22 banned shackling of pregnant women in federal
23 custody, only 26 states have laws prohibiting the
24 practice. And even when there are laws, it still

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1 happens. Among the many medical risks, shackling
2 at any point in pregnancy can increase the risk of
3 falls, which can lead to placental separation,
4 hemorrhage, and still birth.

5 During labor and delivery, shackling
6 can interfere with routine and emergency medical
7 interventions when there is fetal distress,
8 maternal hemorrhage, and the baby gets stuck in the
9 birth canal, or if an emergency caesarian section
10 needs to be done. Pregnant women should never be
11 shackled during childbirth.

12 There are numerous well-established
13 medical and psychological benefits to breastfeeding
14 for both moms and babies. Yet only a few prisons
15 enable moms to breastfeed, either through direct
16 contact or pumping breastmilk.

17 There are many other unaddressed
18 reproductive and sexual health issues facing
19 incarcerated women. They have high rates, as we
20 have heard, of HIV, sexually transmitted infections
21 like gonorrhea and chlamydia, and these are higher
22 than incarcerated men and non-incarcerated women.
23 They must be screened and appropriately treated.

24 Incarcerated women must also have

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1 access to cervical and breast cancer screening and
2 follow-up, according to national guidelines, but
3 this is not consistently available. Research has
4 shown that the majority of incarcerated women plan
5 to be sexually active on release and want to avoid
6 pregnancy.

7 Starting birth control in custody can
8 help them prevent unintended pregnancies during re-
9 entry, but very few prisons actually have birth
10 control methods available, even though they are
11 often used for medical conditions as well.

12 Emergency contraception is also
13 necessary, though not consistently available,
14 especially for women who are sexually assaulted in
15 custody. At the same time, we also have evidence
16 of coercive contraceptive practices in prison, such
17 as the over 100 unlawful sterilizations of women in
18 California prisons from 2005-2012.

19 Women in prison intentionally have
20 their autonomy stripped from them. And when
21 providing family planning services, this potential
22 for coercion must be thoughtfully incorporated into
23 protocols.

24 For older women in custody, menopausal

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1 symptoms like hot flashes, for instance, are hard
2 to endure when you can't control your own
3 environment and when you don't even have access to
4 ice. Transgendered individuals are denied access
5 to hormone therapy and placed in unsafe housing, as
6 we have discussed.

7 While institutions of incarceration are
8 constitutionally mandated to provide healthcare to
9 incarcerated persons, based on the 1976 Estelle v.
10 Gamble Supreme Court decision, there are no
11 mandatory standards and no mandatory oversight for
12 what those healthcare services are. This is why we
13 have such profound variability in reproductive
14 healthcare services.

15 Services are provided based on the
16 discretion of local administrators, which can also
17 lead to dangerous departures from standards of
18 care. This is alarming. The hospital where I work
19 now would be shut down if it failed its
20 accreditation from the Joint Commission.

21 We must work towards a larger goal of
22 not locking up so many women, especially pregnant
23 ones. But in the meantime, we must ensure that all
24 of these women get quality, comprehensive,

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1 reproductive healthcare by doing, among other
2 things, the following.

3 First is to formalize healthcare
4 standards with mandatory accreditation and
5 oversight from a national supervisory entity. Such
6 standards must include pregnancy and postpartum
7 care in accordance with national standards, STI and
8 cancer screenings, and family planning services
9 that include access to reversible contraceptive
10 methods.

11 Second, require all 50 states to pass
12 laws prohibiting solitary confinement and shackles
13 in pregnancy, childbirth, and the postpartum
14 period. And have mandatory trainings to ensure
15 that these laws are actually practiced.

16 And we must also mandate pregnancy
17 statistics data collection through the Bureau of
18 Justice statistics at least every other year. We
19 must make concrete changes in the healthcare
20 incarcerated women receive to promote dignity and
21 safety for them and to become a more just and civil
22 society. Thank you.

23 CHAIR LHAMON: Thank you. Professor
24 Ginsberg.

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1 MS. GINSBERG: Than you to the
2 Commissioners for inviting me to speak to you
3 today. My name is Betsy Ginsberg, and I'm a
4 clinical law professor and Director of the Civil
5 Rights Clinic at Cardozo School of Law.

6 The Civil Rights Clinic at Cardozo
7 engages in litigation on behalf of individuals in
8 groups whose rights have been violated by prison
9 officials. Throughout my 20-year career
10 representing prisoners, I've represented women in
11 cases involving their physical and mental health
12 and sexual assault.

13 I am heartened that the Commission
14 chose to address the issue of women in prison for
15 today's briefing. As we heard this morning, women
16 have been the fastest growing segment of our prison
17 population. But because prisons are closed
18 institutions, they operate far from public
19 scrutiny, and without adequate oversight.

20 I was encouraged by the public outcry
21 in response to the recent abuses at the Federal
22 Metropolitan Detention Center in my home borough of
23 Brooklyn.

24 What made that situation unique was not

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1 the treatment of the detainees there, but that
2 federal, state, and local lawmakers, a federal
3 judge, and other stakeholders made their way into
4 the institution, talked to detainees there, and saw
5 what was going on.

6 Though I would have liked to have seen
7 similar outrage and attention expressed when just
8 two years prior multiple women were raped by staff
9 at the same jail and the conditions for women were
10 deemed unconscionable by the National Association
11 of Women Judges, I'm hopeful that attention is now
12 being paid, including by this body.

13 In my time today, I would like to
14 address some of the legal barriers that prevent
15 women from receiving adequate care, and the lack of
16 legal protections with respect to health and safety
17 of transgender women in particular.

18 As we've heard today, prisons are
19 designed for men, they aren't designed to provide
20 healthcare, and women have distinct healthcare
21 needs. Women in prison derive legal rights to
22 healthcare from the Amendment's prohibition on
23 cruel and unusual punishment, state tort law, and
24 disability discrimination statutes.

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1 But despite formal legal protections,
2 women prisoners are frequently denied basic medical
3 care. Both practical and doctrinal barriers make
4 it difficult for them to access the legal system in
5 order to bring these claims of deprivation of
6 medical care, and I want to address a few of these
7 barriers now.

8 The first is lack of legal
9 representation. Most women in prison who attempt
10 to vindicate their rights to medical care through
11 the legal system do so without counsel. In obvious
12 ways, this limits their ability to vindicate their
13 rights.

14 As someone who reads scores of cases
15 that are litigated by pro se prisoners, I can see
16 without reservation that they fare far worse than
17 counseled plaintiffs with comparable claims.
18 Courts can and should do more to provide resources,
19 including opportunities for limited scope
20 representations.

21 The Prison Litigation Reform Act
22 erected a series of hurdles that apply to prisoners
23 seeking to enforce their rights through the federal
24 courts. Two of these hurdles, the administrative

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1 exhaustion provision and the attorneys' fees
2 provision, make it particularly difficult for
3 prisoners to have their cases heard in court.

4 Requiring prisoners to exhaust their
5 administrative remedies before going to court
6 allows prison officials to control their access to
7 the courts. They do this by making grievance forms
8 unavailable, making the process complicated and
9 technical, and retaliating against prisoners who
10 file grievances.

11 The attorneys' fees provision
12 essentially guts fees shifting that is otherwise
13 available and civil rights actions by drastically
14 reducing the fees that lawyers can recover after
15 bringing a successful prisoners' right case, which
16 is a provision that further compounds the access to
17 counsel problem.

18 The Eighth Amendment standard places a
19 heavy burden on prisoners to show that prison
20 officials had the requisite intent. This standard
21 allows and even encourages prison officials to
22 remain ignorant of health risks.

23 The subjective standard also allows
24 courts to pay tremendous deference to prison

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1 officials, often characterizing a prisoner's Eighth
2 Amendment claim as a disagreement with medical
3 staff that doesn't rise to the level of deliberate
4 indifference.

5 Moreover, the 12,000 women in federal
6 custody are subjected to additional legal hurdles
7 in accessing the courts. Before the Supreme
8 Court's 2017 decision in *Ziglar v. Abassi*, it
9 wasn't entirely uncommon for courts to accept
10 Bivens actions brought by prisoners for conditions
11 claims.

12 However, now the Bureau of Prisons and
13 the Department of Justice are routinely seeking to
14 dismiss these cases on the grounds that there
15 should be no legal remedy under the Constitution in
16 these cases.

17 While litigation continues to be an
18 important mechanism for change, it remains a
19 difficult path. Successes are achieved, like last
20 month's injunction against the Virginia Department
21 of Corrections, finding Fluvanna Correctional
22 Center for Women to be providing constitutionally
23 deficient care. But such successes are long, hard-
24 fought battles by large teams of lawyers whose

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1 resources don't permit enough replication of these
2 kinds of cases.

3 It's also important that the Commission
4 address the issues involving transgender women.
5 Transgender women, especially transgender women of
6 color, are incarcerated at far higher rates than in
7 the general population.

8 Among abuses that they face are the
9 lack of appropriate medical treatment, gender-based
10 harassment, sexual assault by staff and other
11 prisoners, and gender-based isolated confinement.

12 Trans women are regularly housed in
13 what is termed protective custody, but which is
14 often indistinct from solitary confinement. The
15 severe psychological and physical impact of long-
16 term solitary confinement is well-documented, and
17 is compounded when an individual is placed in that
18 setting on the heels of a traumatic experience,
19 such as a sexual assault in prison.

20 Our legal system offers one solution to
21 trans women whose health is, and safety, is
22 compromised by the prison system, but access to
23 that system is hard to come by. Two months ago, a
24 federal court in Idaho granted Adree Edmo a

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1 preliminary injunction requiring prison officials
2 to provide her with gender confirmation surgery.

3 The court found that her gender
4 dysphoria to be a serious medical condition, and
5 due to her extreme emotional pain that led her to
6 attempt self-castration, ordered the surgery.

7 But for every Adree Edmo, who was
8 represented by a large team of experienced counsel,
9 there are scores of trans women who never file
10 claims, whose claims are dismissed on appeal or
11 exhaustion grounds or who, typically without the
12 assistance of counsel, are denied treatment on the
13 grounds that their condition is deemed not
14 sufficiently serious, or that prison officials did
15 not have sufficient knowledge of her need.

16 In fact, shortly before Ms. Edmo won
17 her case, Serenity Williams, a pro se trans woman
18 in a Louisiana state prison, was denied the very
19 same treatment, based on a court's finding that
20 because prison officials had provided her with some
21 treatment in the form of hormones, they could not
22 be found deliberately indifferent.

23 Despite ample evidence that men's
24 prisons are not safe for many trans women, most

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1 states will not house trans women in women's
2 prisons.

3 And the federal government, as the
4 Chairwoman recently noted, rolled back protections
5 for transgender women in federal prisons, and new
6 BOP guidelines used biological sex as the initial
7 determinant, and only allow for housing by gender
8 identity in the rarest cases.

9 Again, I thank the Commission for its
10 attention to these issues, and I look forward to
11 your questions.

12 CHAIR LHAMON: Dr. Smith.

13 MS. SMITH: Good morning. I've been
14 fortunate to work on improving the conditions and
15 circumstances of women in conflict with the law for
16 most of my professional career. And many of the
17 people that I've worked with are on that panel and
18 have reminded me of how old I am.

19 I thank you for the opportunity to
20 testify and appreciate your calling this hearing at
21 this time. I'm testifying today based on my work
22 over the course of more than 30 years as an
23 advocate and lawyer for people in custody.

24 As Project Director of a national

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1 effort to address sexual abuse in custody, co-
2 founder of a settlement house for women in custody,
3 and a Commissioner serving for six years on the
4 National Prison Rape Elimination Commission, I feel
5 strongly that we must stop talking and start doing.

6 I testify today because I hope that
7 this hearing and these testimonies will result in
8 workable recommendations and actions that improve
9 the material circumstances and conditions of women
10 and girls in custody. I hope that the hearing will
11 also result in a request for funding to implement
12 the efforts that we will all testify about to some
13 degree today.

14 If we are able as a result of this
15 hearing to take the actions that are necessary to
16 implement the changes, develop and fund the
17 programs and interventions that we all know will
18 make a difference in the lives of women, men,
19 children, their communities, and our country, then
20 we will have done a very good and important thing
21 today.

22 I will start with my recommendations,
23 then I will talk about the basis for those
24 recommendations in my testimony, in the event that

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1 I run out of time. My recommendation are as
2 follows: first, consistent data collection,
3 qualitative and quantitative, on women's
4 experiences in custodial settings.

5 Second, dedicated funding for
6 incarcerated women's health needs and care,
7 including reproductive and preventive health
8 services, including addiction treatment and
9 services related to women's past trauma and trauma
10 experienced in custodial settings.

11 Three, training for providers of sexual
12 assault and trauma services for meeting the needs
13 of people in custody.

14 Four, create alternatives to
15 imprisonment that address the root causes of
16 women's imprisonment-- addiction trauma; education;
17 and housing instability.

18 Five, equal access for women to
19 educational and vocational opportunities in custody
20 that lead to jobs that provide a living wage. In
21 other words, women should have access to job
22 training paths in custody and outside of custody
23 for more than cleaning, cooking, and sewing.

24 Seven, eliminate cross-gender viewing

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1 and searching of women by men. Women should not be
2 observed while they shower, dress, use the
3 bathroom, or are unclothed for medical visits.

4 Eight, place women in correctional
5 facilities closer to their homes and invest in
6 visitation and communication programs and
7 technologies that allow women to communicate with
8 their families and support reentry.

9 Studies show that contact with family
10 and other supportive individuals increases the
11 likelihood of successful return to the community
12 and a family remaining intact after imprisonment.

13 In November 2003, I was appointed by
14 then-House Minority Leader Nancy Pelosi to serve on
15 the National Prison Rape Elimination Commission. I
16 served formally in that capacity until August of
17 2009, when the Commission sunsetted. But even
18 after that time, the Commission has continued to
19 work to protect the safety of people in custody
20 from rape.

21 We were also fortunate to be able to
22 submit a letter to the BOP challenging and speaking
23 to our consternation about the change in the
24 transgender policy.

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1 What is clear from my work in so many
2 settings and over so many years is that abuse and
3 disrespect for women is a defining feature of our
4 custodial system. Unlike men in custody, women are
5 not going on hunger strikes or taking over
6 institutions that abuse them, as Heather Ann
7 Thompson described in her book, Blood in the Water,
8 about the 1971 Attica Prison uprising.

9 That prison revolt led to important
10 prison reforms and commissions. For that reason,
11 women in custody continue to lack the political
12 power to move the needle to gain the treatment they
13 deserve, and thus only receive attention when
14 there's a crisis or scandal, generally related to
15 sexual abuse or maltreatment of women based on
16 their reproductive status.

17 In the women prisoners' litigation that
18 Julie and I were involved in, we challenged women's
19 access to education and work opportunities. A men
20 in DC prisons could earn a college degree, while
21 women could only earn a GED.

22 Men had access to apprenticeships in
23 plumbing, electrical, and auto repair, while the
24 most that women could aspire to was to work in the

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1 kitchen, cleaning, doing laundry, and sewing. So,
2 often women traded sex for phone calls, for getting
3 their papers moved, and also for visits or money to
4 send to their family.

5 So because I want to end on this note,
6 I want to say that women in prison are not just
7 their wombs. They're also their hearts, their
8 heads, their souls, their homes, and their
9 communities.

10 We should be concerned about women's
11 equality and their access to ways to lift
12 themselves out of poverty and out of the
13 exploitative conditions in their homes and
14 communities that often bring them in conflict with
15 the law. Given that, we should not create the same
16 conditions that women experience in the community.

17 We should do this in order to increase
18 their likelihood of success upon return to their
19 community and to enhance their ability to
20 contribute to the community upon their release.
21 Thank you.

22 CHAIR LHAMON: Thank you very much.
23 I'm going to open for questions from my fellow
24 Commissioners. And just to say at the outset that

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1 I know Commissioner Narasaki has a hard stop at
2 12:10 and so is going to need to head out. And so
3 if she leaves and we are still ongoing with the
4 panel, she's not commenting on what you presented.

5 Commissioner Yaki, do you want to start
6 us?

7 COMMISSIONER YAKI: Yeah, thank you
8 very much. Thank all of you for coming here. I
9 have a, a few years ago, back when I was a law
10 student, that must have been about two years ago, I
11 actually did a trial on the Eighth Amendment, a
12 deliberate indifference in a medical facility,
13 Cheshire, actually, in Connecticut.

14 And I've always been fascinated by this
15 issue going forward. One of the things that came
16 up then that even when I was, God, when I was
17 working for Nancy Pelosi as her Chief of Staff, we
18 were discussing the affair at Bureau of Prisons,
19 and I brought up the issue of the training of --
20 there's one thing about access.

21 Part of the access is access to quality
22 medical personnel. And I'm wondering, what is the
23 status right now of the certification process for
24 someone to become a doctor in a prison system?

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1 Because it used to be pretty low.

2 And I don't know if it's changed or
3 not, but you could have people who would not be
4 able to be certified at the state level be able to
5 practice medicine in a prison.

6 Has that changed any? Are there still
7 concerns about the quality of the medical personnel
8 who are treating, who are available to answer the
9 call of these folks who are here? I see a lot of
10 people nodding up and down, so please have at it.

11 DR. SUFRIN: So the answer is it
12 depends, which is the case with any question and
13 answer about healthcare for incarcerated people
14 because of this lack of standardization or --

15 CHAIR LHAMON: I think your microphone
16 is not on, sorry. Yeah, there.

17 DR. SUFRIN: So the answer is that it
18 depends. As with any question or answer about
19 healthcare for incarcerated people because of this
20 lack of standardization and lack of oversight. And
21 there are several questions folded into yours. One
22 is can, how does a physician get hired to practice
23 in a prison setting.

24 And my understanding is that they do

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1 need to have an active medical license. I do not
2 know what happens at the level of the state board
3 of medical licensure in terms, and the prison
4 that's hiring them. Or sometimes it's not actually
5 the Department of Corrections that's hiring them,
6 but it's a privately contracted healthcare
7 organization.

8 I do not have enough knowledge myself
9 on how the hiring practices happen to ensure that
10 they are able to practice medicine, but I know that
11 it still happens that some of the people that get
12 hired have licenses that have been revoked or
13 they're on probation.

14 But in terms of quality of care, it's,
15 even if you have a valid license and you haven't
16 been put on probation, there are so many other
17 elements that determine the quality of care. One
18 is respect, and this is a group of people who are
19 systematically disregarded and disrespected and
20 carry, there's a lot of stigma and they receive a
21 lot of judgements.

22 Now, there are many wonderful
23 healthcare providers in prisons across the country,
24 but then there are others who cultivate their own

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1 judgements and assume a lot of the punitive aspects
2 of the culture in which they're working. In
3 addition, sometimes people are not adequately
4 trained in the problems that they're going to be
5 seeing.

6 COMMISSIONER YAKI: That's what I was
7 going to ask. Is there, for example, a requirement
8 that a physician be an OB/GYN when they're at, when
9 they're practicing at a prison?

10 DR. SUFRIN: No. There are several
11 types of trained professionals who I would consider
12 to be qualified to take care of pregnant people.
13 OB/GYNs, family physicians, certified nurse
14 midwives, and then certain nurse practitioners and
15 physician assistants who have received specialized
16 training.

17 However, that is consistently not
18 available to people, to pregnant people. And I
19 have been an expert witness on cases where you
20 know, pregnant women have said, have reported
21 symptoms like vaginal bleeding.

22 And I know as an obstetrician, any
23 vaginal bleeding in pregnancy can be a sign of
24 danger. Even if it's just a little bit, it can be

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1 a sign of an ectopic pregnancy, a pre-term labor,
2 many other things. And when I saw this record, it
3 said the nurse said, Oh, you're not soaking a pad
4 an hour, you're fine.

5 Or in another similar case, the nurse
6 said, Oh, that bleeding you're having is a result
7 of the antibiotic you were prescribed for your
8 urinary tract infection, which actually has
9 absolutely no connection.

10 So even when people have appropriate
11 licensure, they may not be appropriately trained in
12 caring for this particular problem. There are
13 prisons and jails that house pregnant people that
14 do not have emergency delivery kits on site.

15 And while we certainly hope that
16 someone doesn't give birth in a prison, if their
17 labor is fast or if their symptoms are ignored,
18 that might happen. And it costs \$30, you can order
19 it from Amazon, and yet there are prisons that
20 don't have emergency delivery kits or someone who
21 knows how to use it.

22 DR. MEYER: I might add that not every
23 person who delivers healthcare in a prison needs to
24 be a physician employed by a department of

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1 corrections. That there are a lot of different
2 models of care out there that could be employed and
3 are quite evidence-based and effective, but they
4 are rarely employed.

5 So they include using community-based
6 providers to come into facilities and deliver care.
7 That also provides nice continuity of care, so when
8 people leave facilities they can go back to those
9 community providers.

10 Some places, like Connecticut where I,
11 Connecticut Department of Corrections currently
12 uses telemedicine to delivery some type of
13 specialized care. So that, you know, has pros and
14 cons, but it is possible to do some sort of
15 routine, you know, high quality care remotely that
16 can be cost-effective for systems and sort of more
17 feasible to implement.

18 And the other idea is that not every,
19 not all healthcare providers need to be MDs or DOs.
20 That they could certainly be mid-level
21 practitioners like nurse practitioners or
22 physicians assistants, who are often very well-
23 versed and very experienced in delivering high
24 quality care, and care can be delivered in a more

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1 cost-effective way.

2 COMMISSIONER YAKI: Does that depend on
3 whether there's access to quality facilities in
4 that area? I mean if you're in the middle of --

5 DR. MEYER: Yes.

6 COMMISSIONER YAKI: Nowheresville, I
7 shouldn't say it quite like that, but you know, if
8 you, a lot of these prisons are located in the
9 middle of nowhere.

10 DR. MEYER: Right.

11 COMMISSIONER YAKI: Access to ancillary
12 facilities is a lot more problematic. So the
13 ability to have a community provider or one would
14 come in and rotate in seems to me to be a little
15 bit of a problem.

16 DR. MEYER: Right, definitely, and it's
17 even more of a problem if women have to be
18 transported out to those providers out in the
19 community, which can be a threat to their personal
20 safety.

21 CHAIR LHAMON: Professor Smith.

22 MS. SMITH: If I may, and I think it
23 was the point, it was actually the ending comment
24 about transportation. Women have problems being

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1 transported from their housing units, sometimes
2 even up to the medical care that's in the facility.

3 And obviously if children are not being
4 delivered or if there's specialty care and they
5 have to be moved off-ground, oftentimes those women
6 are shackled, and they may have to wait for very
7 long periods of time to actually be transported.

8 And so you can often have a situation
9 where women will decide, you know what, I'm just
10 not going to go at this particular period in time
11 because I'm going to be waiting for eight hours, I
12 may not have food during that time.

13 And so you can actually, so there's
14 actually an interaction between transportation
15 between the policies that exist within prisons and
16 also the effect on the access to healthcare.

17 COMMISSIONER YAKI: So it's an indirect
18 barrier to access.

19 MS. SMITH: Yes.

20 CHAIR LHAMON: Commissioner Narasaki.
21 And also, if I could just let folks know, please
22 turn your microphone off when you're not speaking,
23 because we only have so many that can be on and
24 audible at the same time.

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1 COMMISSIONER NARASAKI: Thank you,
2 Madam Chair. Professor Smith, in your written
3 testimony, you mentioned that the Violence Against
4 Women Act specifically prohibits services and
5 funding for services for anyone with a history of a
6 felony. How did that come about, and are there
7 efforts to change that?

8 MS. SMITH: So when initially enacted,
9 that was the situation. There's recently been
10 changes to the Violence Against Women Act which do
11 allow the use of those resources for people in
12 custody.

13 And in fact, some of the funding that
14 the PREA Resource Center has been giving out has
15 been specifically to sort of change the culture
16 specifically around working with people who are
17 actually defendants and who are in custody.

18 Because I think initially the notion
19 was that those who were proponents of the Violence
20 Against Women Act wanted to make sure that that
21 money was not being given to batterers or people
22 who had actually assaulted women.

23 But I think our further understanding
24 of victimization has allowed us to know that there

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1 are victims both inside custody and outside of
2 custody, and that often there's a trajectory or a
3 move of women who've been victimized in the custody
4 to actually end of in custody as well.

5 So those restrictions are no longer
6 there, but those agencies still continue to
7 struggle with providing those services.

8 COMMISSIONER NARASAKI: Thank you. And
9 Ms. Abbate, various witnesses have said that
10 CRIPA's not being used enough. Do you think it is?
11 If not, why, and what would you recommend changing?

12 MS. ABBATE: I agree that CRIPA is
13 absolutely not being used enough. I think that,
14 I'm not sure exactly why. It's always a matter of
15 prioritization.

16 Whenever any new person comes into the
17 Attorney General's Office or one of those higher
18 level offices, and I'm not talking about a
19 different party, any particular party, even, same
20 party, changes within the same party, you're going
21 to have a different focus.

22 And you can see that if you look at the
23 CRIPA reports that have been prepared for Congress
24 every year. For example, in the Bush

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1 Administration, there was a huge focus on
2 conditions of confinement in juvenile facilities.
3 You will see that there have been none of those
4 cases for the last six, seven, eight years because
5 of different focuses on, within a specific statute.

6 And so the Special Litigation Section
7 has a number of statutes, and one of them is the
8 section 14141, otherwise known as police misconduct
9 statute. So there's only been so many folks in the
10 Special Litigation Section, and people have their
11 different focuses.

12 And there was a huge focus on police
13 misconduct for the past however many years,
14 rightfully so. And just as a reality, that means
15 that resources aren't going to be drawn from
16 someplace else.

17 And women prisoners in particular are
18 often overlooked in these cases as well. I think
19 that anybody who wants to focus on women prisoners,
20 there has to be a system in place to do that. Like
21 there needs to be a system in place in agencies
22 where someone's overseeing women's populations.

23 Like what you all are doing now, this
24 is a briefing on women in prison. If this were a

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1 briefing on prison or people in prison, you'd have
2 one person out of, I don't know, 40, and that one
3 voice would be powerful, but it would be so
4 diminished by the rest of the other equally
5 powerful voices with equally powerful concerns.
6 And they're competing, and they're both important,
7 and they all need to be heard.

8 So just as that happens out in society,
9 just as that happens in agencies, so too in the
10 Department of Justice, so too in the Special
11 Litigation Section. And until there's a continued
12 focus, not just on prisoners but women prisoners, I
13 don't think it will change.

14 COMMISSIONER NARASAKI: Thank you. You
15 had also mentioned, I think it was in your written
16 testimony, that PREA doesn't have an enforcement
17 mechanism. So do you recommend one?

18 MS. ABBATE: I'm not sure if I
19 recommend one. I'm not sure, you can't legislate
20 or mandate cultural change. I think it's going to
21 be a process. I think the more that folks can be
22 helped along in that manner, the better.

23 I've seen cultures that have been
24 really problematic and really abusive and really

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1 awful for women change dramatically. You'll hear
2 about that this afternoon. And those cultures have
3 changed based on implementing gender-informed,
4 gender-responsive, trauma-informed care.

5 You know, it takes time, but imagine if
6 we could use those principles and take those
7 principles based on implementation of the PREA
8 standards using them in women's prisons, and do
9 that before there's an issue, before there's a huge
10 scandal, before there's a huge litigation.

11 Because we know it's a problem, we know
12 it happens, we know it can happen in any facility,
13 and we know how to fix it. So we can do that now
14 without waiting for litigation, without waiting for
15 another modification for this, that, or the other
16 federal statute to pass. Se know what to do, we
17 know how to do it, and so we should.

18 COMMISSIONER NARASAKI: I just have one
19 last question. So everyone mentions the problem
20 with solitary confinement and sometimes it's
21 provided as protective. And sometimes, we got a
22 lot of testimony about how women who've given birth
23 get put into solitary confinement.

24 I don't understand why, what the

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1 rationale is for that. And what would be the
2 alternatives? Is it just that the rationales given
3 for solitary confinement are not valid? Is there a
4 need for alternatives?

5 Or is it enough that if you did
6 training and you had the trauma-induced approaches,
7 that you would eliminate the need for there to be
8 that kind of punishment?

9 MS. ABBATE: I think, unless somebody
10 else wants to jump in, that all of those things are
11 important. And it all comes down to treating women
12 in a trauma-informed way, understanding that
13 certain things will trigger a reaction in a woman,
14 so avoiding those instances or reacting to them,
15 modeling the behavior you want to see instead of
16 mirroring the behavior that's coming at you, and
17 treating women with respect.

18 I hope that Dr. Williams will testify
19 today about how many women have been in her
20 solitary confinement restrictive housing section.

21 Because even though I'm no longer
22 working on that case in Tutwiler, I was thrilled to
23 get an email from her over the summer that, it was
24 a screen shot of her list of folks, list of women

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1 who are in segregation, and there was nobody there.
2 There was nobody there.

3 And that was not a part of any of the
4 settlement agreement, nothing was mentioned about
5 don't put women in seg.

6 That was a result of them implementing
7 gender-responsive and trauma-informed discipline
8 over a period of time, preventing the need for any
9 type of discipline, and using the least amount of
10 discipline that's necessary to get the point across
11 to women. And you don't need that much, and it's
12 certainly different for men. So that's been my
13 experience.

14 MS. SMITH: I would agree with Julie.
15 Because I think that when you have a hammer,
16 everything is a nail. And I think that often it's
17 either one, you know, A or Z, in corrections.

18 But to the extent that there's
19 training, that there's support of the kind that
20 folks have received as a result of litigation,
21 right, because often I have to say some of the best
22 folks in corrections I know have actually said
23 please sue me so that I can actually get access to
24 services and resources.

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1 Because there are actually folks that
2 want to do the right thing. But unfortunately they
3 only get that when there is a crisis, and it should
4 not be that, right. It shouldn't be that Tutwiler
5 actually was able to become better and to have no
6 women in segregation as a result of having to be
7 sued.

8 MS. MOSS: What I'd like to speak to is
9 also by and large, women who are in solitary or
10 restrictive housing, one of the things we don't
11 talk enough about or understand is so much of it is
12 around, quote, girlfriend fights and women's
13 relationships with each other that are in a range
14 from close friendships to partners.

15 And it's a very strong dynamic within
16 women's prisons. And so I think that if we could
17 be more deliberate about studying women in
18 relationships, and with some of the programming,
19 having women really understand their own issues
20 around boundaries with each other and healthy
21 relationships.

22 But the staff doesn't really know what
23 to do with that often, and so it's correct that if
24 the hammer is the only thing there, out of

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1 frustration, staff use it.

2 The other thing that we have to be
3 aware of to really understand the corrections
4 environment is we are in one of the most severe
5 staff crises that we've even been in corrections.
6 So maybe Dr. Williams can speak to it, but I'm
7 working with several major women's prisons right
8 now where there's a 50% vacancy rate with staff.
9 And that 50% vacancy rate is devastating.

10 So we may implement good programming,
11 implement trauma-informed care, but if we can't
12 sustain it, then it's very difficult. That's why I
13 wanted to mentioned the secondary trauma that staff
14 have, because they're so stretched out, and then if
15 they also don't have the training, then that's when
16 you see the overuse of restrictive housing.

17 CHAIR LHAMON: Thank you. Madam Vice
18 Chair.

19 VICE CHAIR TIMMONS-GOODSON: Thank you
20 very much, Madam Chair. This question arises based
21 on a newspaper article that I read a couple of days
22 ago in my state newspaper. It's the story of a
23 post-operative transgender prisoner that's been
24 sentenced to roughly ten years in prison. And

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1 she's recognized by her birth name, a male name,
2 but that name, you know, she legally changed it.

3 But she says that she's required to
4 change clothes and shower in view of male inmates,
5 despite having had her breasts augmented and male
6 genitalia removed. That she's regularly issued
7 men's undergarment. After some period of
8 complaining, she has in fact been provided
9 hormones. That she's subject to harassment from
10 the men. No sexual assault or anything, but that
11 she lives in constant fear.

12 And so my question for Professor Smith
13 and Professor Ginsberg and Ms. Moss and any others
14 that might want to weigh in, what should any
15 advocate for her be doing to assist? This is a
16 current situation, it's ongoing.

17 MS. GINSBERG: So I think what you're
18 describing is a fairly common experience of trans
19 women in prison. They're frequently misgendered by
20 prison officials, they're treated poorly, they're
21 harassed and worse.

22 And I think, you know, the first thing
23 I would do, advocating with someone like that, is
24 talk to them about where they would feel safe. And

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1 I think that's what the prison is required to do.
2 And so for some people, it may be that the only
3 place that person's going to feel safe is in a
4 women's prison.

5 VICE CHAIR TIMMONS-GOODSON: And that's
6 what she has expressed.

7 MS. GINSBERG: And there is precedent.
8 And in fact in Illinois a woman, a trans woman, was
9 just moved into a women's prison, and it's happened
10 in that state before. Where she was assaulted and
11 harassed repeatedly prior to that.

12 But of course it shouldn't have to be
13 that the only time a woman gets placed into a, a
14 trans woman gets placed into a women's prison is
15 after a sexual assault. It should obviously happen
16 before that sexual assault.

17 But you know, every person is different
18 and everybody's needs are different. But the
19 prison officials should be working with those women
20 to figure out how they can safely and humanely
21 house them.

22 MS. MOSS: I want to also add that it's
23 really important that we prepare the population and
24 the staff. Because I think when we're --

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1 VICE CHAIR TIMMONS-GOODSON: At the
2 women?

3 MS. MOSS: At the facility, receiving
4 facility. Because I think we've also seen the
5 experience where the women in population were very
6 uncomfortable. And often we implement these
7 policies or practices and don't really prepare
8 people.

9 And I think we could do a whole lot
10 more work and buzz inmate orientations, but
11 programmatic areas where we could really do a lot
12 more around education, not just for the staff but
13 also for the population.

14 VICE CHAIR TIMMONS-GOODSON: Professor
15 Smith?

16 MS. SMITH: Yeah, I'd only add that I
17 think that what you're hearing is again, the hammer
18 and the nail situation. Corrections have
19 traditionally not done well with providing for the
20 individualized needs of people in custody. And so
21 the situation that you're describing is one that
22 would require individualized attention.

23 And I think as all of the panelists
24 who've spoken have said, would actually require

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1 some training specific to that particular
2 situation, and also the ability to be flexible in
3 situations that are not all the same. And I think
4 that that kind of flexibility is not common often
5 in institutional settings.

6 And I think that we need to have more
7 resources to work specifically on I think some of
8 those harder and tougher issues.

9 I think that the history of all of the
10 litigation around trans women in custody in
11 particular has been a history of very, very long
12 litigation, which has often involved self-injury by
13 those individuals, even before they're able to get
14 access to hormone therapy, to wear clothes that are
15 consistent with their gender, to be called by the
16 pronouns that they want to be referred to by.

17 And so I think that this is a situation
18 that continues to require additional attention and
19 resources. And unfortunately, what you've
20 described will be repeated again and again.

21 VICE CHAIR TIMMONS-GOODSON: And in all
22 fairness to the state system, they're aware of it
23 and they say that they're looking into it, so that
24 suggests that they're taking the time to give it

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1 the attention and to come up with some kind of
2 individualized, you know, result. Thank you. Yes.

3 DR. MEYER: Sorry, I was just going to
4 add that there is certainly the social and cultural
5 and legal and psychological aspects of being a
6 trans woman in prison that everyone has mentioned.
7 There's also the medical aspects, recognizing,
8 having providers who are able to recognize and
9 diagnose a gender dysphoria disorder and to manage
10 it effectively with hormone therapy.

11 That means people need continuous
12 access to their medications, you know, throughout
13 their incarceration and on release.

14 CHAIR LHAMON: Thank you. Commissioner
15 Kladney.

16 COMMISSIONER KLADNEY: So many
17 questions, so little time. Ms. Moss, one of the
18 things I've noticed, at least so far, is that the
19 standards seem to be very flexible, although other
20 things are not. Is there some way that
21 professional organizations, I know in the law we
22 have like ideal statutes or, you know, whatever.

23 Is there any way some professional
24 organizations can get together and decide what

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1 standards should be used for BFOQs for certain
2 staffing positions, medical care, medical
3 decisions, medical equipment needed in infirmaries,
4 mental healthcare, things like that? Because, or
5 how many, say, medical staff is needed to treat X
6 amount of women?

7 MS. MOSS: Right. You're very good at
8 multiple questions, I noticed.

9 COMMISSIONER KLADNEY: Well, I got to
10 ask them when I can.

11 (Laughter.)

12 MS. MOSS: So let me just say I feel
13 very strongly that the strategies to make this all
14 better are there and not utilized.

15 And what I mean by that is, for
16 instance, and I'm sure Director Bertsch will speak
17 to this, the Association of State Directors of
18 Corrections, the 50 states and the territories and
19 urban settings that belong to that, they do look at
20 how to standardize particular practices. They
21 share practices with each other.

22 I know that Yale works with them on
23 restrictive housing. But there is a receptiveness
24 right now to what works and what do we need to have

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1 the courage to do to work in this area. And so I
2 think progress can be made by using existing
3 professionals opportunities.

4 Certainly, the medical folks on this
5 panel know those, you know, those standards and
6 environments where that can be true too, the
7 National Correctional Healthcare Association. The
8 American Correctional Association is our major
9 industry professional organization, along with
10 American Jail Association, the American Probation
11 and Parole Association.

12 We do not really take advantage of the
13 capacity building that can happen with leaders in
14 those associations. You often see very little
15 presentations on women offenders in some of those
16 conferences and so forth. I know that there is a
17 receptiveness. I think we can explode that more.

18 The issue that I feel so strongly about
19 around federal assistance is we have some wonderful
20 tools. You heard Dr. Salisbury this morning, but
21 there are other tools. There's one that's a safety
22 scale developed by Doctors Wells and Owen that we
23 used at Tutwiler that actually looks at safety per
24 housing unit around physical, emotional, sexual

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1 safety.

2 And from that, you can really target
3 how to create cultures of safety. So I think
4 connecting these associations with tools that exist
5 and with the information we do know can be done, we
6 have to be strategic. And what has slowed down
7 really is the lack of funding that has been present
8 to do some of that work.

9 DR. SUFRIN: I'd like to speak about
10 the potential for standardization in medical
11 societies. So the American College of
12 Obstetricians and Gynecologists offers guidance for
13 what services should be provided, reproductive
14 healthcare services should be provided in prisons
15 and jails.

16 The American Correctional Association
17 does have a healthcare arm that does have some
18 standards, and they do offer an accreditation
19 program, although the standards they have that
20 relate to reproductive healthcare are very thin.

21 The National Commission on Correctional
22 Healthcare was founded in 1983. It started as a
23 pilot project from the American Medical
24 Association. And the NCCHC, which is a nonprofit,

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1 it accredits healthcare facilities in jails and
2 prisons.

3 And it accredits facilities that meet
4 its rigorous standards that include details about
5 what kinds of services should be provided, staffing
6 ratios, the safety of the healthcare environment,
7 pharmacy formularies, they're very extensive.

8 So there actually already is a system
9 and a model in place for accreditation. Requiring
10 this as a national standard would not be
11 reinventing the wheel. And it's not to say that
12 the NCCHC's system is perfect, it certainly could
13 use some improvement.

14 But it is fairly robust, and the
15 standards that they publish and that they accredit
16 based on are reviewed and revised every two to
17 three years.

18 (Off-microphone comments.)

19 DR. SUFRIN: But it is voluntary to be
20 accredited, and less than a third of prisons and
21 jails in this country are accredited by the
22 National Commission on Correctional Healthcare.

23 I also should probably have the
24 disclaimer, I serve on the Board of the NCCHC as

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1 the liaison for the American College of OB/GYNs.
2 The views I expressed just now are my own and not
3 the organization's.

4 COMMISSIONER KLADNEY: Thank you. Dr.
5 Meyer, you do infectious diseases. And all these
6 women that are incarcerated, at least in the
7 federal system, are getting out of prison, I think,
8 most of them. And if all of them have an
9 infectious disease and you're treating HIV, which
10 other ones do you treat and which ones don't you
11 treat in your capacity?

12 DR. MEYER: Okay, so I should say that
13 I practice HIV care and Hepatitis C care. I served
14 as an infectious disease consultant for the
15 Connecticut Department of Corrections up until
16 2016, when they took over all their own healthcare
17 and healthcare delivery, and no longer forwarded
18 that out to our group.

19 So, yes, a very high proportion of
20 women in prison are living with HIV, so 2.6%, which
21 seems small, but that's about five to seven times
22 higher than the prevalence of HIV in surrounding
23 communities. Many more experience HIV risk.

24 Hepatitis C, also extremely common,

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1 especially among women. Women are 1.5 times more
2 likely than men in prison to screen positive for
3 Hepatitis C. That condition is rarely treated
4 during incarceration. So only about 14 out of 49
5 surveyed state prisons and jails, 14 states,
6 actually screen for Hepatitis C at all, never mind
7 treat it.

8 So fewer than one percent of people
9 living with Hepatitis C ever get it treated while
10 they're incarcerated. And yes, that definitely
11 means that on return back to communities, they can
12 unwittingly continue to transmit to others, and
13 part of the reason why women in prison are really a
14 key target population for prevention.

15 Other infectious diseases, we talk
16 about sexually transmitted infections. Women in
17 prisons much more likely to experience chlamydia,
18 gonorrhea, latent syphilis. All these things are
19 completely treatable, even with penicillin, you
20 know. But if you don't look for it, you don't
21 treat it, and so --

22 COMMISSIONER KLADNEY: And do prisons
23 look for it?

24 DR. MEYER: No.

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1 COMMISSIONER KLADNEY: Or is it the 14
2 that you were talking about?

3 DR. MEYER: So the 14 screen for
4 Hepatitis C, you know, 17 states screen, routinely
5 screen for HIV.

6 That's not so many, and not everyone
7 receives routine screening for sexually transmitted
8 infections on entry, either, which is a travesty,
9 because it's very easily treatable, and you know,
10 and has profound consequences, not only for public
11 health as we're talking about, but for individual
12 health if it goes untreated.

13 COMMISSIONER KLADNEY: And if you could
14 talk about, you did talk briefly in your statement
15 about MAT and the lack of it. Why do prisons
16 choose not to treat with medication and require
17 people to go cold turkey, so to say? That was a
18 term from my generation.

19 DR. MEYER: I get it, I get it. Yeah,
20 so I'll just say medication-assisted therapy, for
21 those of you who don't know, is an evidence-based
22 method of treating substance use disorders. Highly
23 effective, not available for all substance use
24 disorders, but certainly for opioids and alcohol,

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1 which is like the primary substance use disorders
2 that most people in prison experience.

3 Rarely available, includes for opioids
4 for example, methadone, buprenorphine, and
5 naltrexone. So the issue that facilities often
6 face is that methadone, by federal requirements, a
7 facility that is delivering methadone needs to be
8 federally licensed to deliver methadone. And so
9 many prisons and jails, whether it's a cost issue
10 or a time/energy/effort/interest don't become
11 licensed.

12 Now, outside facilities that are
13 licensed can come into the facility, prisons and
14 jails, deliver methadone. But this is also rarely
15 done. It's happening more, but doesn't happen
16 much.

17 Buprenorphine, you don't need any
18 special license to do. Physicians, I have one,
19 physicians can apply to have a DEA waiver to
20 prescribe buprenorphine. You don't need any
21 special, you know, other than that, you don't need
22 any special training or anything to deliver
23 buprenorphine, and it's highly effective.

24 So I think there's the lack of interest

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1 and energy, and sort of it's a belief issue.

2 COMMISSIONER KLADNEY: Well, that is
3 the standard today.

4 DR. MEYER: It is.

5 COMMISSIONER KLADNEY: Is treatment
6 with medication, not to completely get off the
7 drug. I mean, that's ideal, but it doesn't happen,
8 is that correct?

9 DR. MEYER: Yes, so the standard is a
10 combination of medication-assisted therapy with
11 behavioral therapy. So sort of a comprehensive
12 approach, and people aren't getting that at all in
13 prisons and jails.

14 COMMISSIONER KLADNEY: And Ms. Abbate -
15 -

16 CHAIR LHAMON: This is your last one.

17 COMMISSIONER KLADNEY: I know. I know
18 this is my last question.

19 MS. ABBATE: Yes, sir.

20 CHAIR LHAMON: Your first last question.

21 (Laughter.)

22 COMMISSIONER KLADNEY: Let me ask all
23 five of them in one question.

24 MS. ABBATE: All right. I'm ready.

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1 COMMISSIONER KLADNEY: My question is,
2 would the litigation changes have occurred in
3 Alabama without the power of the consent decree?
4 And do you think that that is -- the consent decree
5 bar that's currently in effect affects that
6 litigation today?

7 MS. ABBATE: No and no. So, no, I
8 don't think that the changes would have been
9 sparked without federal intervention. But, no, I
10 don't think that the consent decree bar today
11 should have any effect on that or on other future
12 settlements. And the reason is --

13 COMMISSIONER KLADNEY: No, I'm talking
14 about future, current -- excuse me, I didn't mean
15 to interrupt. But --

16 MS. ABBATE: No, no, for future cases,
17 right? No, because the reason that, I think the
18 reason that Tutwiler has been successful is not
19 because the piece of paper says consent decree or
20 settlement agreement.

21 The reason that Tutwiler has been
22 successful is because that jurisdiction, that
23 women's division has owned their change. They've
24 had the consent decree behind them to say, hey

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1 look, we have to do this.

2 They are the people that Professor
3 Smith was talking about who say, hey, they didn't,
4 but, hey, come sue me, we need some changes. They
5 totally didn't.

6 But, right, but my point, I mean, those
7 are the same type of people. Those are the type of
8 people that are in corrections agencies and
9 facilities all across the country who want to do
10 what they know is right and what they know works.
11 And they are rolling a boulder uphill in the mud
12 knee deep and just facing challenge after
13 challenge. And so oftentimes it is nice to have
14 that in there.

15 To make the change meaningful, there
16 has to be a culture change. And that doesn't
17 matter what form a settlement agreement takes,
18 whether it's court-enforceable or not court-
19 enforceable. If you get a court-enforceable
20 consent decree and people aren't doing what they're
21 supposed to do and you get a federal judge to say
22 do what you're supposed to do, you're in the same
23 place. You're nowhere better off.

24 You've got to get the buy-in. You've

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1 got to make sure the consent decree is workable,
2 the remedies work for the facility, timelines are
3 workable. And that's the only way you can get it
4 to change when you're talking about culture change,
5 about sexual abuse in women's facilities.

6 CHAIR LHAMON: I realize that we're
7 over time. But I just wanted to follow up on that.
8 I found it very compelling in your written
9 statement the information that you included about
10 your expectation, that open investigations at DOJ
11 should have concluded but have not yet concluded.

12 And I wonder if you can give us
13 information, for those of us who don't stand in
14 your shoes, we're not working there at the time
15 that you were, how we would know to expect that
16 those investigations should have concluded and what
17 suppositions we can draw from the fact that they
18 have not.

19 MS. ABBATE: So I think that one public
20 indicator of progress of cases are those yearly
21 CRIPA reports. They're organized very strangely
22 because they talk about cases filed and
23 settlements.

24 But the first step is an investigation.

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1 After an investigation comes findings. After
2 findings comes negotiation and hopefully settlement
3 or file a case. Sometimes you file a case and a
4 settlement at the same time if you want it to be
5 court-enforceable, Rule 41 stuff, without being an
6 actual consent decree so you can avoid that stigma
7 for the jurisdiction.

8 I think just be aware of how long
9 things have been opened. If you see something that
10 has -- findings have come out for an investigation,
11 they will say when the investigation opened. Do
12 the math. How many months does it take? Is there
13 anything that started before those findings came
14 out, because those are the ones that are the
15 stragglers? And there are some definite
16 stragglers.

17 CHAIR LHAMON: Thanks very much. We
18 are past time. So I thank this panel for your
19 testimony and your expertise. And we very much
20 appreciate it.

21 We will return at 1:10 to begin our
22 third panel. Thank you.

23 (Whereupon, the above-entitled matter
24 went off the record at 12:13 p.m. and resumed at

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1 1:11 p.m.)

2 **PANEL THREE: REVIEW OF TREATMENT OF WOMEN WHILE**
3 **INCARCERATED**

4 CHAIR LHAMON: And thank you for your
5 continued attention to this important topic. We're
6 going to now proceed with our third panel, which is
7 titled -- Ms. Pupovac, we have started. Ma'am --

8 Okay. We're going to keep going.
9 Thanks, thanks. Okay. We're now proceeding with
10 our third panel, which is a review of treatment of
11 women while incarcerated.

12 Given some of the topics that come up
13 with regard to women in prison, I remind the
14 panelists and the public and my fellow
15 Commissioners that since 1983 Congress has
16 prohibited the Commission from taking in or serving
17 as a clearinghouse for information about abortion.
18 Please tailor your remarks accordingly.

19 In the order in which they will speak,
20 our panelists for this panel are Lashonia Thompson-
21 El, Executive Director of Women Involved in Reentry
22 Efforts, W.I.R.E., Judith Resnik, Arthur Liman
23 Professor of Law, Yale Law School, Leann K.
24 Bertsch, Director of Correction and Rehabilitation,

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1 North Dakota Department of Corrections, Jessica
2 Pupovac, freelance reporter, and Dr. Wendy
3 Williams, Deputy Commissioner of Women's Services,
4 Alabama Department of Corrections. Ms. Thompson-
5 El, please go ahead.

6 MS. THOMPSON-EL: Good afternoon.
7 Thank you so much for having me today.

8 Before I start, I would like to add a
9 couple things to my testimony that are not in my
10 original testimony that I submitted because I
11 recently received word from SFF Hazelton that
12 there's a very bad drug problem there and that of
13 the 31 women in segregation all but 2 of them are
14 in segregation for drug-related offenses.

15 And I also received news that a woman
16 who I believe might be a D.C. resident because her
17 last three digits are triple 0, she's 49 years old
18 and recently died on Valentine's Day in SFF
19 Hazelton. The facility was on lockdown and she was
20 complaining of chest pains and was ignored and
21 ultimately passed away on Valentine's Day of 2019.

22 My name is Lashonia Thompson-El. I am
23 a resident of the District of Columbia. And I
24 spent 18 years in prison. I went to the federal

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1 system in 1998 after the Revitalization Act was
2 passed here in the District of Columbia. So, prior
3 to that, I had spent five years here at CTF. I was
4 sentenced to 20 to 60 years. And I was released in
5 2011 after my initial parole hearing.

6 Since I've been home, I've been
7 privileged to work at the Mayor's Office on
8 Returning Citizen Affairs here in the District of
9 Columbia where I worked on female reentry-related
10 issues. I also worked at the Correction of
11 Information Council here in D.C. And I was
12 inspecting conditions of confinement where D.C.
13 residents are incarcerated in FBOP.

14 I'm currently employed at the D.C.
15 Office of the Attorney General where I serve as a
16 restorative justice facilitator. And I work with
17 youth involved in the criminal justice system
18 facilitating conferences with youth who cause harm
19 and youth who have been harmed.

20 I would like to speak a little about
21 the D.C. criminal justice system because, as you
22 know, we don't have a prison system. So all of the
23 women who are convicted of felony offenses in D.C.
24 who are serving more than a year are sentenced

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1 through the Federal Bureau of Prisons even though
2 they're serving local crimes, time for local
3 crimes.

4 And so many of them are in Waseca,
5 Minnesota, Aliceville, Alabama, Carswell, Texas.
6 And quite a few of them are at SFF Hazelton.

7 Obviously, the distance away from home
8 makes it very difficult for women, D.C. women in
9 prison to receive visits from their families and
10 their children.

11 As of November 2018, there were 161
12 women who are D.C. residents in the FBOP. As I
13 said, that includes 39 in Hazelton, 15 in
14 Philadelphia, and also Dublin, California, and
15 Carswell, Texas, and Minnesota.

16 Next I would like to speak about the
17 inhumane treatment that I experienced while I was
18 in the FBOP as a result of overcrowding. There was
19 one instance where I spent time in the segregation,
20 in SHU, the segregation housing unit for a minor
21 offense where I spent 40 days in a SHU, 3 women to
22 a cell. One was on a mattress on the floor.

23 There were times when we were denied an
24 opportunity to take showers because the claim was

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1 that there was not enough staff. I believe policy
2 states three showers a week. There were times when
3 we got no showers at all.

4 There were times when we had to stay in
5 segregation because general population was filled
6 to capacity. So you had to stay in there and wait
7 for a bed to open up in general population, which
8 means somebody had to go home or either you had to
9 go out when someone came in.

10 I'm sure that many of the people on
11 this panel already understand the impact that
12 solitary confinement has on women who are already
13 suffering from trauma.

14 Many of the sanctions that women are in
15 solitary confinement for could be handled on a UDC
16 level, which is the unit disciplinary committee, so
17 they don't have to necessarily go into segregation
18 or go before the DHO for the minor offenses that
19 they are being locked down for.

20 So a woman can go to the SHU for taking
21 fruits or vegetables out of the kitchen. Whereas,
22 a man would only go to the SHU for something much
23 more serious like fighting or having a weapon.

24 The offenses are not equal for the

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1 punishment that women are receiving. And that's
2 because the segregation is usually not as crowded
3 in the facilities where women are because,
4 obviously, their numbers are lower and many of them
5 are not engaging in the sort of aggressive
6 behaviors that men engage in.

7 So I believe that solitary confinement
8 is being used more as a tool of oppression than it
9 is to actually address disciplinary problems.

10 I have worked closely with Senator
11 Booker's office and doing some work around the
12 First Step Act with the National Council of
13 Incarcerated and Formerly Incarcerated Women and
14 Girls.

15 And one of the biggest things that
16 concern me is whether or not these decisions to
17 stop shackling pregnant women will actually be
18 implemented. Will we actually provide oversight?
19 And will we actually enforce these new regulations?

20 Also, when we say that women need to be
21 at least 500 miles from home, will we actually
22 recognize that that's still too far and that it
23 causes, it's just a huge burden for caregivers who
24 are often elderly people from disenfranchised

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1 communities who absolutely can't afford a plane
2 trip to a rural area to have children visit with
3 their mothers?

4 I would like to take a moment to talk a
5 little bit about the U.S. Parole Commission and the
6 fact that local women who are serving time for
7 local offenses are being seen by the United States
8 Parole Commission and being sanctioned under
9 federal guidelines instead of D.C. guidelines.

10 And so, as a result of that, we have an
11 elderly woman right now who has many, many health
12 issues who has received her second setoff for three
13 years. The U.S. Parole Commission has asked her to
14 serve an additional three years even though she's
15 aged out of crime, even though the offense that
16 she's incarcerated for would never change. But
17 because the federal guidelines are much stiffer
18 than D.C. guidelines, they've basically changed her
19 split sentence into a life sentence.

20 I would like to talk about the fact
21 that we have decided as a country to prevent people
22 in prison from reading books. I've learned from
23 women who have recently been released from BOP
24 facilities that it has become increasingly

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1 difficult for family members to order books from
2 preferred vendors and that books are basically
3 becoming obsolete.

4 And for women who are in segregation,
5 this just makes the mental aspect of being confined
6 much more difficult. It makes their trauma much
7 more worse.

8 I'd like to speak about the
9 programming. I believe that the FBOP should
10 develop an institute residential intensive trauma
11 programs for women, programs like the one
12 spearheaded by Dr. Onorato at FCI Danbury in the
13 early 2000s.

14 Women were able to live in a
15 therapeutic environment and learn skills to cope
16 with trauma and do it prior to incarceration,
17 during incarceration, and after incarceration.
18 Learning life skills like how to regulate trauma,
19 how to keep yourself safe, and how to recognize
20 one's triggers are key to transformation and
21 successful reintegration.

22 As you all know, research shows that
23 women who have access to a higher education are
24 less likely to recidivate. And I implore the FBOP

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1 to offer women in their custody access to
2 accredited college programs.

3 Another response to trauma that women
4 confront in prison can be to employ more qualified
5 to work in the FBOP where women are housed. With
6 the vast number of correctional officers who are
7 white men, there's a culture within the FBOP that
8 threatens the overall dignity of women in prison.

9 These potential female employees need
10 to be willing and prepared to work with women.
11 They will need sensitivity training, trauma-
12 informed training, and more. The fact is that
13 prison guards often tend to be more punitive toward
14 people they can identify with.

15 To improve the inhumane conditions of
16 confinement within the FBOP, it will take brave
17 people who are willing to see beneath the surface
18 of institutional policies that justify abuse. We
19 need brave men and women who are willing to hold
20 the FBOP officials accountable to women in prison,
21 their families, and communities. Thank you.

22 CHAIR LHAMON: Thank you very much.
23 Professor Resnik?

24 MS. RESNIK: Hello. My name is Judith

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1 Resnik. I am the Arthur Liman Professor of Law at
2 Yale Law School. I'm joined by Alexandra
3 Harrington, Senior Liman Fellow in Residence, and
4 by Molly Petchenik, a Yale student, both of whom
5 helped to put together our materials.

6 I'm honored and I am also moved by the
7 expertise, experiences, and commitments of the
8 people in this room. And I want to thank the
9 Commission for convening this hearing.

10 I have to say, as a very baby lawyer in
11 1997, I testified at a hearing called the Forgotten
12 Women Offender in the House of Representatives. It
13 is wonderful to see that the Commission has
14 reinvigorated commitments and to see how much
15 information is available here that could seriously
16 change the American landscape on these issues. I
17 want incredibly quickly to flash some numbers and
18 information to try to consolidate some of what you
19 have heard and then return to some of the questions
20 raised.

21 One question is: what's the prison
22 population? The answer is that about 1.5 million
23 people are in prison, and of that number about
24 116,000 are women held in federal and state

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1 facilities. In the federal system, the prison
2 population (shown on the accompanying power point,
3 as slide 2) is about 180,000 people and 12,000-
4 13,000 of those individuals are women. As the
5 slide I am showing also depicts, there are 133
6 facilities in the federal system and 29, as you've
7 heard, house women.

8 Today, much discussion has been had
9 about a statute called the First Step Act. We
10 thought it would be helpful to provide brief
11 excerpts, shown in slide 3. The text says that
12 healthcare products, translated as products that
13 women need every month for when they're
14 menstruating, must be available free. And the
15 statute also says that pregnant women should not be
16 put into shackles.

17 Now, on one hand, this is great news.
18 On the other hand, this is incredibly depressing
19 news. It's 2018, and it takes a federal statute to
20 say, in essence, "don't chain women when they're
21 pregnant and give them what they ordinarily need to
22 take care of themselves." So this is good and sad
23 news. The next excerpt (slide 4) of the First Step
24 Act shows that it also talks about placement, which

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1 we just heard from others is so important. The
2 statue provides that a prisoner ought to be housed
3 presumptively within 500 miles. As slide 4 also
4 depicts, if you look back in 2006, the Bureau of
5 Prisons (BOP) said exactly the same thing in its
6 policies. If you go to the 1972 Attica Report of
7 which Arthur Liman was the central author, he wrote
8 (as quoted on slide 4) how "worrisome" it is that
9 we put prisons in remote places far from view and
10 far removed from the homes.

11 So whether it's 1972, 2006 or 2018,
12 we're still talking about 500 miles. That distance
13 imposes huge and impossible barriers. Let me show
14 you how that works on the ground.

15 In 2013, the Liman Center was involved
16 in this question because the Federal Bureau of
17 Prisons wanted to close its only facility for women
18 in the northeast. To understand the impact, we
19 obtained information from the Bureau of Prisons
20 that, of the 815 women or so who were there, in
21 Connecticut, with U.S. addresses, 70 percent were
22 from regions outside of the northeast. They were
23 extremely far away. The details are on slide 5.

24 As you'll see from the slide 6, and

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1 this responds, Commissioner Kirsanow, to your
2 question about where people are, the map created
3 provides more information. It gives you the numbers
4 of women and men housed in different regions and
5 whether those facilities were overcrowded -- across
6 the United States.

7 Slide 7 is a quick glimpse of an
8 incredibly sad additional fact, which is that in
9 Danbury, Connecticut, the only northeast facilities
10 for federal prisoners who are women, under 350
11 women have housing. Further, according to the BOP
12 website, the hours for visiting women are less than
13 those provided the men at the same location.

14 The same slide provides information on
15 Aliceville, where the BOP holds more than 1,600
16 women. Aliceville is not a good place to be if
17 you're from Alabama. It's in a remote area near
18 Mississippi. It's a terrible place to be if you're
19 from other places -- in terms of services, in terms
20 of access to religious volunteers, in terms of all
21 that prisoners need.

22 So, point one, what do women in the
23 federal prison system need? Oversight for the
24 First Step Act. Slide 8 makes this point by listing

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1 the key facets the Act provides. What is the
2 availability on the ground of personal hygiene
3 products? How safe are women when they are
4 pregnant? Where are they placed and why? Why are
5 people sent far, far away?

6 Other important aspects of the First
7 Step Act are sentencing reduction, good time
8 credits. Our questions are: are women and men of
9 all colors getting them, what are the proportions
10 and where are the education and vocation programs?
11 You have heard Professor Smith talk so importantly
12 about women as economic agents. We need to be
13 talking about economic agency, and therefore to
14 learn: what are the programs? Where's UNICOR (the
15 federal prisons' industries program)? Who's being
16 paid what in the federal system? We need all the
17 facts on the ground.

18 I turn now to the next question that
19 you asked specifically that we address: discipline.
20 Given the time, I will do so quickly.

21 First of all, slide 9 lists the several
22 studies that were undertaken by the Liman Center
23 and the Association of State Correctional
24 Administrators, the remarkable group of people who

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1 run the prisons around the United States of whom
2 Director Bertsch was the president up until
3 recently. We have done a series of reports. In
4 your record is the most recent 2018 report about
5 what corrections calls "restrictive housing" and
6 most everybody else calls solitary confinement. I
7 have a copy with me. What we know from 43 states is
8 that they reported, as of the fall of 2017, that
9 49,000 people were in their restrictive housing -
10 22 hours or more, 15 days or more. Using the full
11 prison population, we estimated that about 60,000
12 people in the United States are in 22 hours or
13 more, 15 days or more.

14 I need to add that these data are only
15 from state-wide prison system administrators. We
16 also know that people are held in solitary
17 confinement in jails and other detention
18 facilities. In terms of prisons, we know that
19 several thousand have been in those conditions for
20 more than three years. And, data from prison
21 systems tells us that, under their own definitions
22 of "serious mental illness," at least 4,000 people
23 whom these systems describe as seriously mentally
24 ill were in restrictive housing.

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1 Come to the question of the numbers
2 women -- women are a relatively small percent, 1.2
3 percent, of the solitary confinement population.
4 But as we know, women are both over-incarcerated
5 and underserved.

6 If you look at the next slides (10-15),
7 which I'm just going to run through, we have data
8 by jurisdiction. As you can see from (slide 14),
9 men of color are more represented in the
10 restricted, solitary population than in the general
11 prison population (in which they are also over-
12 represented as compared to the general population
13 outside of prisons).

14 Slide 15 makes plain that women of
15 color are much, much more represented in the
16 solitary population than they are in the general
17 population of the prison system. As you can see,
18 our data identified that black women were almost 40
19 percent in the restricted housing population in the
20 jurisdictions reporting such data to us, whereas,
21 they are about 23 percent of the general prison
22 population.

23 Let's just go quickly through the
24 remaining points. Pregnant prisoners. As of the

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1 time we did this survey, as noted on slide 16, none
2 of the jurisdictions that reported data to us on
3 this (more than 30) said they had any pregnant
4 prisoners in solitary. As you know, we have also
5 heard from people individually that on occasions
6 pregnant women have been held in solitary.

7 Transgender is another subpopulation of
8 concern. Of the 38 jurisdictions reporting data to
9 us, they identified 2,444 transgender individuals;
10 twenty-one jurisdictions reported that some were in
11 restrictive housing, and that total was 157.

12 In the next slide (17), the good news
13 is the American Correctional Association is trying
14 to call for less use of restrictive housing. And
15 in the next slide (number 18), we provide the
16 international picture; the Nelson Mandela Rules,
17 promulgated by the United Nations, call for no more
18 than 15 days for anybody, because more than that is
19 torture. Slide 19 serves as the reminder that in
20 1950, the UN Commission on the Status of Women
21 resolved to look at the problem of women in prison.
22 Then, as now, there is much to be done.

23 So, in terms of operationalizing what
24 it is that the Commission could do, our proposals

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1 (submitted as a follow up to this statement)
2 include first, mechanisms are need to oversee the
3 implementation of the First Step Act and how women,
4 men, and transgender individuals are affected.
5 Second we need more "steps." Fifty miles or
6 seventy-five miles from home is plenty far enough.
7 If you can't put someone within 50 or 75 miles,
8 maybe that person need not be incarcerated at all.
9 Decarceration is the central agenda. As for
10 solitary, it is time to stop it.

11 CHAIR LHAMON: Thank you so much,
12 Professor Resnik. Thank you.

13 MS. RESNIK: Time to stop it. Thanks.

14 CHAIR LHAMON: Ms. Bertsch.

15 MS. BERTSCH: Good afternoon. It's a
16 pleasure to be here. I'm Leann Bertsch. And I've
17 served as the Director of the North Dakota
18 Department of Corrections and Rehabilitation since
19 2005.

20 Over the last 20 years, the women's
21 prison population in North Dakota has grown at a
22 rate of almost 500 percent, roughly double the rate
23 of the men's population.

24 Currently, the 210 women in custody in

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1 North Dakota make up about 12 percent of North
2 Dakota's overall prison population, which is well
3 above the national average, which is around 7
4 percent.

5 The women in our custody tend to be in
6 their early to mid-30s. Their average length of
7 stay is approximately 235 days. But a small
8 percentage are serving multi-year sentences. About
9 16.5 percent of the women have returned on a new
10 conviction after a previous DOCR sentence. And
11 about 40 percent are incarcerated due to parole and
12 probation violations.

13 Although the North Dakota Department of
14 Corrections and Rehabilitation has been recognized
15 nationally as a leader in prison reform, we have
16 not been meeting the needs of our women's
17 population. Our women's program is not only less
18 comprehensive and robust than our larger men's
19 program but has also failed to address many of the
20 needs specific to incarcerated women.

21 Improving our women's program is one of
22 our main priorities in the coming years. And it
23 has been a focus of the current state legislative
24 session in North Dakota.

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1 In my testimony today, I would like to
2 talk about the challenges for our women's program
3 historically, as well as some of the areas we are
4 focusing on in our reform efforts.

5 The number of women incarcerated in
6 North Dakota is small. And in many ways, the women
7 have been treated as an afterthought. My previous
8 women's services director, who served with us for
9 36 years, would remind me that when she started
10 there was only 6 women incarcerated in our system.
11 So being treated as an afterthought wasn't so rare
12 because there were so few of them.

13 So, over the past 25 years, they've
14 moved between a variety of facilities, none of
15 which was originally intended to incarcerate women.
16 Until the late 1990s, they were held in a unit at
17 the main state penitentiary where our maximum
18 security men are housed. In 1998, they were moved
19 to a unit in our medium security men's facility.

20 And in 2003, the Department of
21 Corrections brought forward a plan to the state
22 legislature and said they need a facility designed
23 and built for women.

24 However, the state legislature decided

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1 to move the women to a former Catholic boarding
2 school built in a remote part of the state in order
3 to support economic development in the region. The
4 women have remained in this facility since 2003.

5 The facility is not meant to house
6 incarcerated women. And its structure and layout
7 are not ideal for a variety of reasons.

8 Furthermore, the remote location has
9 prevented the women from receiving the volume and
10 range of services that our men, who are more
11 centrally located, receive. The location has also
12 made it challenging to meet the rehabilitative,
13 medical, familial, emotional, and cultural needs
14 specific to incarcerated women.

15 The history of the women's system in
16 North Dakota exemplifies the way that women, who
17 compose only a small percentage of the prison
18 population in every state, can often be overlooked
19 by state systems.

20 Women are moved where there is space or
21 where they can fulfill the financial interests of
22 the state. It is time for North Dakota and states
23 around the country to prioritize the needs of
24 incarcerated women and develop their correctional

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1 systems accordingly.

2 In order to reform our women's system,
3 the DOCR has spent time exploring the backgrounds
4 and needs of our female population, which differ
5 from our male population in important ways.

6 Meeting the needs of our women require
7 offering new programming, changing the cultural and
8 disciplinary practices of staff, and finally,
9 building a new gender-responsive facility in a more
10 central part of the state.

11 We've begun making some of these
12 changes and are working with other state actors to
13 implement the rest in the coming months and years.

14 I will focus on several major
15 considerations in developing our women's program.
16 Women are less likely to be convicted of violent
17 crimes. They are often engaging in criminal
18 activity due to substance abuse and/or poverty.
19 Many have not received a high school degree or GED.

20 In order to facilitate rehabilitation
21 and reduce recidivism rates among women, we must
22 offer programming that addresses the root cause of
23 their criminal involvement. In particular, women
24 must have access to substance abuse programming.

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1 They should reap financial aid, money management
2 training, housing and legal assistance to help
3 combat poverty.

4 They should also have access to GED
5 classes, as well as vocational training. And they
6 must have the opportunity to participate in work
7 release to help prepare them for jobs in the
8 community. Ultimately, altering the circumstances
9 that lead women to commit crimes will help ensure
10 success upon release.

11 About 75 percent of the women in North
12 Dakota are mothers. Many have young children. And
13 they are often the primary caretakers before
14 they're incarcerated. Given the high percentage of
15 mothers and particularly mothers of young children,
16 our women's program must focus on creating and
17 maintaining healthy family relationships.

18 Family reunification should occur as
19 frequently as possible. And the DOCR needs to
20 provide spaces and events that are family friendly.

21 Women incarcerated in North Dakota have
22 medical needs that differ from the male population.
23 They have a higher rate of diabetes, a higher rate
24 of hepatitis C. And approximately ten percent are

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1 pregnant when they enter prison.

2 Our women recently -- I won't go into
3 some of the examples of that. But one of the
4 things I would also point out is that about 34
5 percent of our female population is Native
6 American. That's our largest minority population
7 in North Dakota.

8 And despite Native Americans composing
9 just under five percent of the population, we have
10 that high percentage incarcerated in our system.
11 Native American women have specific family,
12 cultural, spiritual, and criminogenic needs that
13 the DOCR must provide.

14 Currently, the women's facility is far
15 from most of the reservations in the state, as well
16 as the cultural services provided in major cities.
17 Moving to a more central location closer to both
18 the reservations and these services will allow the
19 DOCR to provide for Native American women in
20 custody.

21 Ultimately, we have begun implementing
22 many of these changes. But there is still a lot of
23 work to do.

24 We are grateful for the national

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1 conversation around the needs of incarcerated
2 women. And we hope that a few years from now the
3 women's system in our state and in states across
4 the country will be better suited to meet the needs
5 of the population they are meant to serve.

6 Thank you for the opportunity to
7 testify today.

8 CHAIR LHAMON: Thank you very much.
9 Ms. Pupovac?

10 MS. PUPOVAC: Hello. Thank you for
11 this opportunity to address the Commission.

12 My name is Jessica Pupovac. And I was
13 the lead reporter on a year-long investigation that
14 aired on NPR and was published in the Chicago
15 Reporter last fall.

16 My colleagues and I obtained data from
17 13 state prison systems, visited women's prisons in
18 4 states, and interviewed dozens of current and
19 formerly incarcerated women, academics, and
20 corrections staff.

21 We found that in prisons across the
22 country women receive a disproportionate number of
23 disciplinary tickets for low level offenses, things
24 like being disruptive and disrespectful.

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1 For example, in Indiana, women had more
2 than double the rate of tickets than men overall
3 and three times as many tickets for refusing to
4 obey an order. In Vermont, female inmates are
5 three times as likely to get a ticket for, quote,
6 making a derogatory comment. And in California,
7 women were two and a half times as likely to be
8 ticketed for, quote, disrespecting an officer.

9 Many individual and structural factors
10 might, of course, contribute to this. But experts
11 we talked to pointed time and again to the unique
12 backgrounds of incarcerated women, particularly
13 their histories of trauma and the failure of
14 correctional institutions to adopt responsive
15 policies, practices, and training.

16 Other panelists today have addressed
17 this subject. So I'll just share one striking data
18 point. Women behind bars in the U.S. have a higher
19 incidence of PTSD than any other studied
20 demographic including combat veterans.

21 Meanwhile, common aspects of prison
22 life, things like strip searches, verbal abuse,
23 restraints, and isolation, can and often do
24 exacerbate trauma's lingering effects. One woman

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1 we interviewed talked about seeing and hearing past
2 abusers in the voices and faces of correctional
3 officers.

4 Experts told us that many female
5 inmates react to these situations in a way that
6 might be natural for trauma survivors. They try to
7 leave the situation. They might talk back or they
8 might attempt to exert some kind of control. And
9 it's precisely these actions that in a prison
10 environment often get them into trouble.

11 Alyssa Benedict, founder of Core
12 Associates, who will be testifying during the
13 public comment session, told us that, quote, women
14 right now are being punished for coping with their
15 trauma by a workforce that doesn't understand them.

16 Across the country we found very little
17 comprehensive training taking place in state
18 prisons on effectively working with female inmates
19 in a way that deescalates conflict and might avoid
20 triggering past trauma.

21 Meanwhile, in the absence of such
22 training, one former warden in a women's prison in
23 Illinois told us that these punitive responses and
24 what she called power struggles that ensue do not

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1 make prisons safer. Quote, we discipline based on
2 emotion rather than safety and security, she told
3 us.

4 But although there seem to be
5 widespread anecdotal awareness of this tendency,
6 many states are not documenting it.

7 We requested internal reports and
8 disciplinary data from 26 states. Eleven of those
9 states did not provide us with any information.
10 They claimed they don't track discipline in a
11 central location and that preparing the data would
12 have been overly burdensome. So, in other words,
13 nearly half of the states in our sample do not know
14 whether they are disciplining women
15 disproportionately.

16 Of the states that did provide
17 responsive data, 13 of the 15 disciplined women at
18 higher rates for many lower level offenses.

19 Most states provided data on the number
20 of infractions and the punishment for those
21 infractions separately. However, the few that
22 provided longitudinal data showed women often being
23 punished more harshly than men for these low level
24 offenses.

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1 For example, women in Rhode Island were
2 more than three times as likely to be placed in
3 restrictive housing for an offense called simply
4 disobedience.

5 In some states, although women had
6 lower incidences of violent or major infractions in
7 prison, they still received more severe punishments
8 overall.

9 In Idaho, women were more likely to be
10 put in physical restraints. In California, they
11 were more likely to have their phone privileges
12 revoked. And in Missouri, although women only
13 received a quarter of the higher level violations,
14 they comprised more than two-thirds of the total
15 inmate population in disciplinary segregation.

16 These violations have real
17 consequences, not just for women but for their
18 families. Punishments for these low level
19 infractions result in more time served through the
20 revocation of good conduct credits, less access to
21 the phone, revocation of privileges like contact
22 visits, and as many women told us, a deep sense of
23 failure, and in some cases, retraumatization.

24 As you've heard here today, officials

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1 across the country have begun to recognize the
2 important differences between men and women in
3 prison. They're adjusting needs assessments, case
4 management protocols, and substance abuse
5 treatments accordingly.

6 But ultimately, while many Departments
7 of Corrections have added gender responsiveness to
8 their vocabulary, comprehensive training on working
9 with female inmates and victims of past trauma
10 remains the exception not the norm.

11 And crucially, as our data show, most
12 if not all of these efforts have yet to change the
13 disparity in how women behind bars are disciplined.

14 Resources do exist. The National
15 Resource Center for Justice-Involved Women has
16 recently published a comprehensive guide meant to
17 assist corrections professionals in revising their
18 approach to discipline and sanctions.

19 And several states we spoke with
20 mentioned at least one official attending some type
21 of gender-responsive and trauma-informed training
22 at the National Institute of Corrections.

23 We also asked almost every person we
24 interviewed whether more female officers and women

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1 in positions of leadership might help change
2 corrections culture. Our data show that
3 correctional officers are disproportionately white
4 and disproportionately male even at female
5 institutions.

6 However, every person we asked, from
7 former inmates to current wardens, told us that
8 hiring more women won't necessarily solve the
9 problem. What's needed is more accountability,
10 more training, and systemic change.

11 Still, some women in positions of power
12 are doing what they can to help drive that change.
13 Warden Sheryl Dahm at the Iowa Correctional
14 Institution for Women recently began training every
15 new cadet in gender-responsive and trauma-informed
16 approaches.

17 She's also actively modeling best
18 practices and discussing every disciplinary ticket
19 with the individual officer who wrote it to see if
20 there may have been a better way to address
21 problems through a gender-responsive and trauma-
22 informed lens.

23 The goal, says Dahm, is to make prison
24 a place where women feel safe and supported so that

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1 they can develop the skills to both resolve
2 conflicts and heal from past trauma.

3 She told us that ultimately she isn't
4 as interested in compliance with prison rules as
5 she is in building women up, in her words, to be
6 stronger, more capable mothers, women, and citizens
7 upon their release. Thank you.

8 CHAIR LHAMON: Thank you very much.
9 Dr. Williams?

10 DR. WILLIAMS: Madam Chair,
11 Commissioners, distinguished colleagues, thank you
12 for allowing me to join you today to discuss the
13 treatment of women in prison.

14 My name is Wendy Williams. And I have
15 the honor and privilege to serve as the Deputy
16 Commissioner for Women's Services for the Alabama
17 Department of Corrections.

18 Beginning in April of 2014, the
19 Department began to transform correctional policies
20 and practices impacting women offenders and their
21 families, staff, and communities. Micro and macro
22 level changes have been accomplished and were
23 essential in building and sustaining gender-
24 responsive and trauma-informed practices in the

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1 three female facilities.

2 Numerous factors have contributed to
3 the progress that has been made in Alabama, but
4 none more important than the specific steps taken
5 with the women, staff, and stakeholders to reform
6 the culture.

7 Using evidence-based principles,
8 Alabama's major women's prison, Julia Tutwiler
9 Prison for Women, has developed into a model
10 women's correctional facility.

11 The guiding framework for the
12 monumental changes accomplished by the department
13 was the women's services strategic plan, a
14 collaborative effort involving many agency
15 stakeholders and national experts, including
16 consultant advisors.

17 The women's services strategic plan was
18 designed to fit into and complement the larger
19 agency strategic plan through a shared vision of
20 promoting positive outcomes for the staff and the
21 offenders under the department's supervision.

22 Developing and implementing gender-
23 responsive leadership, a gender-responsive
24 leadership philosophy was essential to creating a

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1 culture of safety. Women's services has
2 established a leadership structure that supports
3 the implementation and sustainment of practices
4 that reflect women's pathways to criminality.

5 Leadership strategies involve the
6 offenders, as well as staff, anchored in a strong
7 organizational support structure with an executive
8 level leadership position specific to women's
9 services.

10 Most correctional agency policy manuals
11 focus on guidelines specific to the male offender
12 population, which has been stated here several
13 times today. However, operational practices in
14 women's facilities should reflect the differences
15 between men and women and inform policies that
16 provide guidance to staff in their daily
17 interactions with the population.

18 Tutwiler now has over 60 standard
19 operating procedures that are gender-responsive and
20 trauma-informed, all of which promote a culture of
21 safety. These policies are the framework for staff
22 training to provide education on the knowledge and
23 skills necessary to consistently provide culturally
24 competent interpersonal interactions.

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1 The training also provides guidance for
2 staff on respectful communication with all
3 offenders. Accommodating gender and cultural
4 differences into institutional operations allows
5 for a climate of respect.

6 Multiple offender surveys conducted
7 between 2016 and 2018 at Tutwiler revealed an
8 average of 85 percent of the offenders reporting
9 that they feel sexually safe. Our goal is 100
10 percent.

11 One of the first policy changes that
12 was implemented in October of 2014 was unlimited
13 access to personal hygiene items for the women.
14 Stored neatly in cabinets in all bathroom areas,
15 the women have unimpeded access to feminine hygiene
16 items and other toiletry items at any time. They
17 do not have to request these items from staff.
18 They simply access them in the bathroom areas as
19 needed.

20 This may sound like a minor change.
21 But this policy alone began a cultural shift in
22 operational practices in the department's women's
23 facilities.

24 One of the more important policies

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1 impacting women offenders is the discipline and
2 sanctions policy.

3 In collaboration with consultant
4 advisors and the National Resource Center for
5 Justice-Involved Women, the department implemented
6 the women's services behavior intervention and
7 discipline policy on January 1, 2018. This policy
8 is strength-based and encourages staff to model a
9 culture of encouragement and self-awareness.

10 Prior to the development of this new
11 and innovative policy, Tutwiler was initiating well
12 over 600 major disciplinary actions or tickets a
13 year with an average population of only 850 women.
14 In 2018, after implementing the new policy,
15 Tutwiler initiated only 316 major disciplinaries,
16 nearly half the amount from the previous year.

17 The new policy has also reduced the use
18 of restrictive housing to those behaviors that, or
19 where inmates exhibit violence against other
20 inmates or staff. The average stay for an offender
21 who was sanctioned for restrictive housing in 2018
22 was only nine days. And as mentioned earlier here
23 today, there's many occasions where we have no
24 women in restrictive housing.

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1 We expect to see a continued decline in
2 major disciplinary actions and the use of
3 restrictive housing as this new policy matures.

4 Facilitating successful reentry for
5 women offenders is part of the mission of women's
6 services and another goal of the strategic plan.
7 At Tutwiler, reentry begins at intake. Women are
8 interviewed using the Women's Risk Needs
9 Assessment, an assessment designed to inform the
10 risk and needs of women offenders.

11 Before implementing the WRNA, using a
12 risk assessment designed for male offenders, the
13 custody of women offenders in the department
14 reflected at least 30 percent of the population in
15 moderate to high risk and 47 percent of the women
16 in low risk.

17 As of November 1, 2018, after two years
18 of implementing the WRNA, only 20 percent of the
19 women offenders in the department are in moderate
20 to high risk and over 70 percent are in low risk.

21 This custody breakdown more accurately
22 portrays the female offender population and the
23 potential risk they may or may not pose to the
24 institutional security and public safety.

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1 To my knowledge, the department is the
2 only state correctional agency using WRNA to inform
3 needs and risk of women offenders.

4 Once the WRNA assessment is completed,
5 the offenders are matched with a social service
6 caseworker to guide the women through the
7 enrollment process for recommended programming.
8 The department has implemented seven evidence-based
9 programs, women-specific programs that are proven
10 to impact the lives of women offenders.

11 These programs address the needs
12 identified with the WRNA as they relate to the
13 pathways of the women. These program categories
14 include reentry, substance abuse, emotional
15 regulation, trauma, parenting, healthy
16 relationships, and cognitive behavioral programs
17 for the moderate to high risk offenders.

18 In March 2013, the department partnered
19 with the Alabama Prison Birth Project, a non-profit
20 organization created to bring support services to
21 pregnant women inside Tutwiler.

22 These community partners provide dual
23 services to the pregnant women, as well as the
24 Mother's Milk Initiative. The department created a

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1 lactation room at Tutwiler for mothers to pump
2 their breast milk and have it delivered to their
3 newborn babies.

4 Programs such as this strengthen family
5 connections during incarceration to assist with
6 building supportive relationships once the women
7 are released.

8 I will close in my last few seconds by
9 saying that without some of the federal assistance
10 that was available to Alabama through the National
11 Institute of Corrections, the PREA Resource Center,
12 and other organizations as such some of these
13 changes would not have been possible.

14 Thank you for your time today.

15 CHAIR LHAMON: Thank you very much.
16 I'll open it up for questions from my fellow
17 Commissioners. I understand Commissioner Yaki has
18 a question.

19 COMMISSIONER YAKI: Thank you, Chair.
20 And a point of personal privilege, I just wanted to
21 recognize Professor Resnik's husband, Dennis
22 Curtis, who actually started the clinical program
23 at Yale that enabled me to have a fun time suing
24 the Connecticut prison system on medical

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1 conditions.

2 So, Professor Resnik, just on the First
3 Step program, it is just a first step. What are
4 you looking for and what, how can we help in
5 putting information out there or recommendations on
6 how to operationalize it so that it's more than
7 just a statute that sits there but actually has
8 life to it? Because obviously one of the things
9 you want to do is take this and with other models
10 that are out there in the states and expand it
11 nationwide to the larger prison system that's in
12 the state prisons, as in the state incarceration
13 pipeline.

14 MS. RESNIK: Now it's on. Thank you.
15 The exchange before lunch was about implementation.
16 The panel has all spoken about how to take words on
17 pages and translate them into action on the ground.

18 The second step for the Congress is to
19 enact and for, with great bipartisan support,
20 decent, humane treatment for people who are
21 incarcerated and to provide for ways to incarcerate
22 fewer people.

23 Given the current statute, the first on
24 the first steps is implementation. Ask the Federal

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1 Bureau of Prisons for data informed by gender,
2 race, and ethnicity and other forms of identity
3 about who is getting what under the [First Step]
4 Act. I had the privilege of being in Alabama last
5 month in prison; I looked at an open cabinet to
6 which I was taken in the bath areas for women
7 prisoners at Tutwiler, and anybody can reach into
8 the cabinet and take what they need.

9 Is that true in all the 29 facilities
10 for women? And how can we move both in the public
11 and the contract facilities (the private sector
12 that was also mentioned here), we need to look at
13 them and ask: where's the open cabinet and how can
14 women get these items?

15 Who is monitoring? You saw astonishing
16 health experts who have testified here. Let them
17 be the individuals doing ad hoc inspections to ask
18 about how healthcare is being provided.

19 In terms of the education and vocation
20 that's called for in that Act and for sentence
21 reduction, how is it playing out?

22 In terms of second steps, I just wanted
23 to mention that Connecticut has just passed a
24 statute recently called Fair Treatment of

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1 Incarcerated Persons, which is to addresses some of
2 the gender inequalities we've seen.

3 And the U.N. has what are called the
4 Bangkok Principles, which are 2010 rules governing
5 that are also addressing the rules of women who are
6 in the detention systems. All of these are models
7 that are available, federal and state legislation.

8 Most importantly I think, as I am
9 deeply committed to a federalism model which
10 understands the important role of states and
11 territories as well and Indian tribal nations and
12 their courts, would be to think about what kind of
13 infrastructure could be put into place so that a
14 group like this meets once a year or more to take
15 the temperature of what's happening on the ground.

16 One model is the State Justice
17 Institute. You've heard of others. How could
18 there be joint work, state and federal and tribal,
19 that would change the way people are being treated
20 in prison, as well as helping people to get out?

21 CHAIR LHAMON: Commissioner Kladney?

22 COMMISSIONER KLADNEY: Thank you, Madam
23 Chair. Ms. Pupovac, is your reporting -- as I
24 understand it, there's more to come or you're doing

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1 something else?

2 MS. PUPOVAC: Potentially there might
3 be more to come. But there's nothing planned right
4 now. We did release --

5 CHAIR LHAMON: It depends on how it goes
6 today, right?

7 MS. PUPOVAC: I'm sorry?

8 CHAIR LHAMON: It depends on how it goes
9 today, right?

10 MS. PUPOVAC: Yeah, exactly. We'll
11 see. And how many public records requests still
12 get answered. Apparently, there's data I've heard
13 here today that was apparently not available when
14 we requested it.

15 But we have released all of the data
16 that we obtained publicly in the last month for any
17 researchers or anyone who might be interested in
18 probing it further.

19 COMMISSIONER KLADNEY: Thank you. Ms.
20 Bertsch?

21 MS. BERTSCH: Bertsch.

22 COMMISSIONER KLADNEY: Bertsch. I was
23 wondering. Has anybody done any studies as to why
24 your population on Native Americans is so high? I

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1 mean, are they being sentenced equally with other -
2 -

3 MS. BERTSCH: You know, that's a great
4 question. So, in our total population, so the men
5 make up about, we have about 23 percent of our
6 population are Native American men.

7 Oftentimes the Department of
8 Corrections, when there's not services available in
9 the community and our tribal communities have some
10 of the largest pockets of poverty, they often look
11 at the Department of Corrections as like the pseudo
12 Department of Human Services.

13 So, if they don't get treatment in
14 their area, if there's not treatment for drug and
15 alcohol abuse or mental health services, they
16 actually sentence them to the Department of
17 Corrections under a crime.

18 And so 70 percent of our district court
19 judges in a study when we were doing justice
20 reinvestment indicated they had sentenced low risk,
21 non-violent people to the Department of Corrections
22 and Rehabilitation just to access services.

23 So, if you have a population that comes
24 from an area that there's limited services, it goes

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1 to say that it's very --

2 COMMISSIONER KLADNEY: It's a heck of a
3 solution.

4 MS. BERTSCH: -- obvious. It's not a
5 great solution, not at all.

6 COMMISSIONER KLADNEY: So also for Ms.
7 Bertsch and Ms. Williams, how can you tell the
8 discipline you're handing out is fair? How do you
9 determine that?

10 MS. BERTSCH: So that's a great
11 question. We actually review all the disciplinary
12 reports that are written across the department.
13 And there's a review at the prison level, but then
14 also at our central office level.

15 And for the last several years,
16 probably since 2010, in addition, write-ups aren't
17 just negative. They're positive.

18 So we actually do positive behavior
19 reports to try to catch people doing the right
20 thing. And we strive for a four-to-one ratio, four
21 positives to every negative.

22 So that's actually built into our
23 system. And we track that every month to see how
24 we're doing as far as we will actually want to

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1 write people up for doing the right thing because
2 it's actually more successful than beating them
3 over a head catching them doing the wrong thing.

4 So we track that very closely. And the
5 more positive behavior reports that we've written,
6 you can actually just target people with positive
7 reinforcement and really reduce bad behavior. So
8 we track it very close.

9 COMMISSIONER KLADNEY: Ms. Williams?

10 DR. WILLIAMS: Yes, sir. We utilize
11 several different methods to get feedback from the
12 offender population.

13 First of all, I want to acknowledge
14 that we actually involved the women in the creation
15 of our new policy. We had focus groups and things
16 of that nature to get feedback from them, because
17 they also want to live in a safe place.

18 So hearing from them was important.
19 And then having a role in the development of that
20 policy I think was critical.

21 But we also have opportunities weekly
22 for the women to share their inputs on different
23 things. And they will definitely share their
24 opinion on things. So I think it's important to

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1 listen to them.

2 You know, our policy is still new.
3 It's a little over a year now. We've made some
4 revisions to it. Some of those revisions were made
5 based on recommendations from the women as well as
6 the staff.

7 So I think for us that's what's been
8 important is everyone having a voice in it and
9 being willing to make changes if necessary, if they
10 were needed.

11 COMMISSIONER KLADNEY: Ms. Thompson-El,
12 my question is, and I asked this this morning as
13 well, would it benefit the Commission, say, if we
14 went and visited Hazelton?

15 MS. THOMPSON-EL: Definitely. I think
16 that, first of all, it would benefit the women
17 there to know that you great men and women care
18 enough to come in and visit them.

19 For some of them they haven't been able
20 to get visits from their family or their local
21 legislators. So I think it would, first of all,
22 show them that the nation is paying attention,
23 because a lot of them feel like their issues aren't
24 being heard. So I definitely believe it will be

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1 helpful for the women.

2 And obviously, you would learn. It
3 would be a life-changing experience just to be able
4 to meet the women where they are and get to know
5 them and maybe have some sort of restorative
6 dialogue and allow them to -- allow the
7 Commissioners to hear from them and exchange
8 information, definitely.

9 COMMISSIONER KLADNEY: Thank you very
10 much.

11 CHAIR LHAMON: Commissioner Kirsanow?

12 COMMISSIONER KIRSANOW: Thanks, Madam
13 Chair, and thanks to the witnesses for the
14 information.

15 I have a few questions again, numbers.
16 And it may be in some of your written material.
17 But I may have missed it.

18 I'm interested in recidivism rates.
19 And I was really interested and, Professor Resnik,
20 you've got a lot of great data. But I'm not sure
21 if I missed any of this data.

22 Does anybody have any data, anybody on
23 the panel who has data with respect to recidivism
24 rates for female prisoners who may have been, I

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1 think you used the term ticketed versus those who
2 haven't been ticketed? Is there any data along
3 those lines? Does anyone know?

4 DR. WILLIAMS: I don't have any data
5 specific to those characteristics. But I can share
6 in Alabama the recidivism rate for women is usually
7 five percent lower than it is for the male
8 population. Our recidivism rate for men is around
9 31, 32 percent. The recidivism rate for women is
10 around 25, 26 percent.

11 We are still new into our change
12 process. We've just implemented these programs,
13 these new evidence-based programs last year. We
14 just implemented the new discipline policy last
15 year. So we expect to have some data in the next
16 couple years that will actually tell us whether or
17 not it's having a reduction in recidivism.

18 We're also in the process of validating
19 the WRNA instrument in Alabama. The University of
20 Alabama and Auburn University have partnered to do
21 the validation study. So, in three to four years,
22 we'll have some really good data on WRNA as it's
23 used to both predict risk and needs.

24 MS. RESNIK: In terms of raising

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1 concerns about safety and community and well-being,
2 our focus in the ASCA-Liman reports has been on
3 restrictive housing. In one of our reports, we
4 learned from just 30 jurisdictions that more than
5 4,000 people were released from profound isolation
6 to the streets. So, as far as the safety of all
7 human beings is concerned, no one I know thinks
8 this is a good idea.

9 In terms of safety and transitions,
10 central to protecting against recidivism, one need
11 is to ensure that people are being helped in prison
12 to be interactive, responsible persons. Another
13 need comes from the prior panel about healthcare:
14 is there a continuity of care in terms of the forms
15 of medication people are getting in prison once
16 they're out of prison?

17 And then in terms of the sad stories
18 about the lack of support services in healthcare
19 and social services in areas of poverty and
20 elsewhere in the United States is, what are the
21 resources available?

22 So the reentry panel, which I know is
23 coming, is key to non-recidivism. One of the keys
24 is the ability to function while you're

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1 incarcerated and that can improve individuals'
2 ability to function when they get out.

3 A substantial amount of research done
4 by corrections people shows that if you're visited
5 while you're in prison, you do better while you're
6 in prison and you do better once you're out. This
7 comes back to your point from this morning about
8 how far away people are from their households and
9 how difficult it is to visit them.

10 There's this interaction between time
11 and resources and visiting hours in facilities,
12 which is the understaffing issue that we hear so
13 much from corrections. One other concern that
14 wasn't as clear as it needed to be in discussions
15 on the federal system from this morning is the
16 profound understaffing of these facilities.

17 And while we all want to be "smart on
18 crime" and "right on crime" in terms of reducing
19 the costs, ensuring safety, and helping people, if
20 we put people in settings where there are too few
21 staff members and they are inadequately trained,
22 the staff is both hyper-stressed and unresponsive;
23 these are some of the reasons why prison systems
24 say there can't be more visiting, there can't be

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1 more programs, they can't do more because they
2 don't have staff.

3 The integration of security into our
4 discussions is central. Security and sufficient
5 staff with resources and knowledge and training and
6 decent pay will help reduce those recidivism rates.

7 COMMISSIONER KIRSANOW: Yeah, and I'm
8 interested if anybody has any data, and you can
9 supply it later. It doesn't have to be right now.

10 But the rates of recidivism based on,
11 or compared between males and females, between
12 those who have been in restrictive confinement or
13 in restrictive housing versus those who have not,
14 those who are, for example, within a 500-mile
15 radius of home and those who are not, I'd kind of
16 like to get an idea for what are the impacts on
17 those types of conditions on recidivism, and also,
18 one other one, recidivism rates based on protected
19 class, whether it be race, any other type of
20 protected characteristic. Thank you.

21 CHAIR LHAMON: Commissioner Heriot?

22 COMMISSIONER HERIOT: I think I have a
23 suggestion. And maybe this has already been done.
24 But a couple of people have mentioned this notion

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1 that prisoners who get visitors do better when they
2 get out than prisoners who haven't had visitors.

3 And the problem with that is you don't
4 know whether the causation runs one way or the
5 other. It may be that the sort of person that
6 nobody wants to visit is the sort of person that
7 doesn't do very well when they get out.

8 So what you could do to test that is to
9 look at the population of prisoners whose home is
10 very far away, because the reason they're not
11 getting visited is going to be disproportionate
12 because it's hard to, it's hard for the people to
13 get to them, and compare that to the population who
14 are very close to their families. And if the
15 family isn't coming, it could signal something
16 that's different from what, you know, from what
17 you're thinking, and compare the gap in those two.
18 And I think that would be useful research.

19 CHAIR LHAMON: Commissioner Narasaki?

20 COMMISSIONER NARASAKI: Thank you. So
21 I'm very focused on what are the recommendations
22 that we could make that would actually be useful.

23 And we've heard a lot about, you know,
24 the federal system and what they're trying to do

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1 and the fact that the feds generally can't tell the
2 states what to do.

3 So what are the carrots and sticks that
4 you would recommend that we should recommend that
5 could be put in place to encourage states to give
6 up shackling pregnant women, for example, and the
7 many things that you all feel from the research
8 that has been done should be changed?

9 I mean, are there carrots and sticks
10 already in place but there's just not enough money
11 or are there some carrots that should be created?

12 MS. BERTSCH: I'll take a stab at this.
13 Having just come off being the president of the
14 Association of State Correctional Administrators,
15 we've talked a lot about how there's really no
16 national standards for prison systems. It's very,
17 very piecemeal.

18 So you have pockets of standards, like
19 Prison Rape Elimination Act. But for standards
20 that are much broader that really get to the
21 conditions of confinement, oftentimes those
22 standards come about from a court case, which is
23 really an ineffective way to get at running really
24 good correctional systems.

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1 At some point, I think we looked at the
2 European system to see what they're doing. And
3 it's very different, because we have 50 states.

4 So one of the ideas is to almost have a
5 system like the Interstate Compact for Adult
6 Offender Supervision where you have a compact and
7 you have some national standards. And there's some
8 agreement and some consistency.

9 But there really is no oversight for
10 prisons in the United States. I mean, we have the
11 PREA audits. But there's no real teeth or
12 enforcement mechanism for that.

13 So they tried to I think get people to
14 go along with it by saying we'll take your federal
15 funds away. There's not a lot of federal funds
16 that go into state prison systems. So that wasn't
17 a huge, big carrot or a stick.

18 So I think, you know, some sort of
19 national standards that everyone would aspire to I
20 think would be a good roadmap for policy makers,
21 because each state corrections system is really at
22 the mercy or at their state legislature to
23 adequately fund and recognize what they should do
24 to run a good corrections system.

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1 COMMISSIONER NARASAKI: We've had a
2 couple of witnesses today suggest that perhaps
3 there needs to be an interagency task force and/or
4 some independent agency or commission. What would
5 that look like? Who would be on it? What would
6 they be doing?

7 MS. RESNIK: I'm sure I'm one of many
8 of the people who can be responding to this.

9 First off, there is an infrastructure
10 that exists through the Association of State
11 Correctional Administrators that meets twice a
12 year. The heads of all the corrections systems
13 come together. They often meet with others who do
14 research with them and work as partners with them.

15 In terms of a structure, the federal
16 system has, in some eras, been at the forefront.
17 But we can see that there are many states that are
18 far ahead.

19 Colorado has now said no one can be in
20 solitary confinement, for 15 days, 22 hours or
21 more. That's it for the whole system. So we have
22 an example from Colorado and from North Dakota of
23 enormous state leadership in terms of solidarity
24 confinement.

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1 You'd want state, federal, Indian
2 tribes, the polities that are in the United States,
3 to come together with federal funding to create a
4 commission. It might be modeled after the U.S.
5 Commission on Civil Rights, for example, to bring
6 together and include the people who've been
7 incarcerated, as well as the people who are
8 staffing prisons, and those who have come today who
9 do research on or who represent prisoners, to focus
10 on what prisons should look like.

11 I should just add, you know, prisons
12 were invented to respond to the idea that killing
13 people, branding them, and sending them to the
14 colonies were bad ideas. As soon as prisons were
15 invented in the 1600s, 1700s, people said, oh my
16 god, look at how horrible prisons are.

17 Chaining, whipping, and starving were
18 practices and not only in the 1600s. That was
19 whipping in Arkansas in 1965, and federal judges
20 held in 1965 and in 1967 that doing so was all
21 right, as long as you have some procedural process
22 was provided. In 1968, Judge Harry Blackmun (then
23 sitting on the Court of Appeals for the Eighth
24 Circuit) held that human decency doesn't let a

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1 prison system whip anymore, and the corrections
2 people agreed.

3 Thinking that what we have in prisons
4 today is just "normal" is a problem because what
5 prison is today comes from what has been built out
6 of terribly totalitarian regimes before the world
7 of rights to which you're all devoted. So the
8 question is now that we have rights, how do we
9 remake the thing that we call prison, as well as
10 reduce its use.

11 COMMISSIONER NARASAKI: So I have one
12 more --

13 CHAIR LHAMON: One more.

14 COMMISSIONER NARASAKI: Okay. So I did
15 raise the issue earlier about what do we do about
16 the fact that, at least in the federal system,
17 there's only 20-something places.

18 And the response I got back,
19 understandably is, well, we don't want to have more
20 places. We want alternative sentences. We want
21 to, you know, reduce the population. And I get
22 that. But the reality is some people are going to
23 be in jail, and that's a problem.

24 Do any of you have suggestions about

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1 what to do about that challenge in terms of not
2 even being able to live up to the standard of 500
3 miles much less anything less than that?

4 MS. THOMPSON-EL: I just wanted to
5 speak to the idea of restorative justice and
6 alternatives to incarceration for women, especially
7 women who are the primary caregiver of minor
8 children, services that include substance abuse
9 treatment and trauma treatment.

10 MS. RESNIK: I think you could say if
11 there was a provision, it could be policy, it
12 doesn't have to be statutes, that you can't put
13 someone more than 50-75 miles away. Then the
14 question is, either don't incarcerate them or find
15 a facility that you believe is safe and gender-
16 responsive in which you can put them. The question
17 would be, where can you put someone? You really
18 can't send them far away.

19 COMMISSIONER NARASAKI: Thank you.

20 CHAIR LHAMON: Commissioner Adegbile?

21 COMMISSIONER ADEGBILE: Yes, hello.
22 Dr. Williams, I'd like to focus for a second on
23 some of the work you've been sharing with us out of
24 Alabama.

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1 And there's been a bit of a discussion
2 about the relative contribution of carrots and
3 sticks to leading to reform and change in the
4 correctional environments.

5 And so I'm interested in hearing your
6 views about the relative contribution of these two
7 things to the work that's underway in Alabama.

8 And then noting that you have
9 acknowledged that some of the new policies that are
10 looking good and are encouraging under your
11 supervision are sort of early, and so they don't
12 have a lot of data behind them, I nevertheless want
13 your reflections on how the experience that you're
14 having, including the process of change, could be
15 brought to other institutions.

16 What are the prerequisites? One of the
17 things I heard from you was leadership. But what
18 are the prerequisites for creating change? And how
19 does that all sort of fit together in this soup? A
20 lot in there, but whatever you can share with us
21 would be appreciated.

22 DR. WILLIAMS: Okay.
23 Well, to your first question about the carrots and
24 sticks, there's already a large body of research
25 available through the National Institute of

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1 Corrections and other organizations as such. But
2 because of some of the resource streams being
3 decreased to some of those institutions in the last
4 few years, some of that research has sort of
5 stalled and it's not continuing.

6 So, I think having access as a state
7 corrections administrator, having access to
8 research that's already been conducted that you can
9 draw upon, and certainly more recent research, I
10 think that's helpful. Also, technical assistance
11 through organizations such as the PREA Resource
12 Center and the National Institute of Corrections,
13 we've utilized a lot of those resources. They're
14 not as available now as they were. So, I know for
15 some states that that's probably an impediment to
16 getting the funding.

17 Because, as Director Bertsch, with
18 state legislators allocating the budgeted funds for
19 state corrections agencies, you pretty much get
20 what you get, and it's rarely enough to actually
21 operate and provide the sorts of innovative changes
22 that we're talking about.

23 As referenced earlier before lunch,
24 litigation often helps with that, and the
25 investigation at Tutwiler certainly opened up some

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1 revenue streams for Alabama through the State
2 Legislature. Had that not happened, we wouldn't
3 have our state-of-the-art video surveillance
4 system; we wouldn't have a lot of the other
5 renovations that we've made and are currently
6 making.

7 So, I think those carrots and sticks
8 are very important. There just doesn't seem to be
9 a lot of availability of those any longer. And I
10 think that's unfortunate for states like Alabama
11 that don't have the resources to actually support
12 those.

13 Remind me of what your second question
14 was.

15 COMMISSIONER ADEGBILE: Yes. So, I
16 guess the next piece was just, based on that
17 experience, how does one think about rolling it out
18 to other places, right?

19 DR. WILLIAMS: Right.

20 COMMISSIONER ADEGBILE: What are the
21 ingredients of beginning to have change and what
22 contribution does leadership make --

23 DR. WILLIAMS: Right.

24 COMMISSIONER ADEGBILE: -- whether it's
25 come from a stick or a carrot or a prayer, or

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1 anything else?

2 DR. WILLIAMS: Right.

3 COMMISSIONER ADEGBILE: I think one of
4 the things we've heard today is that we need change
5 in this area; we need more focus.

6 DR. WILLIAMS: Right.

7 COMMISSIONER ADEGBILE: We need a
8 gender-focus, a trauma-focus. We've heard all of
9 that.

10 And so, there are people out there that
11 want to do the best they can. How do we help them
12 to be successful? How do we have more examples of
13 what's going on under your supervision that we can
14 roll out other places, right? You build it little
15 by little at least.

16 DR. WILLIAMS: Right. All of the above
17 pretty much, to sum it up. But it starts with
18 leadership. You've got to have the leadership
19 structure in place that can make sure that the
20 changes are made, because you're going to have
21 opposition internally.

22 I mean, that happened in Alabama. We
23 were rolling out these innovative changes in the
24 women's facilities, and even some of our own
25 stakeholders internally were poking and prodding at

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1 times, trying to almost set us back.

2 So, you've got to have key leadership
3 in place to support the change. The agency has to
4 be transparent. You've got to own whatever issues
5 that are there in order to get beyond them. And
6 that's hard sometimes for corrections agencies. It
7 really is. But, once you do it, it's like a 200-
8 pound weight off of your shoulders.

9 So, that would probably be the two lead
10 things I would say, is leadership, transparency,
11 and then, you have to do ongoing, as Jessica and I
12 were talking about before we started, ongoing staff
13 education and offender education. You can't do a
14 one-and-done with changes like this. If you're
15 going to shift a culture, it has to be ongoing.

16 I heard someone mention earlier today
17 tying your strategic plan to the appraisal and
18 performance measures for staff. It has to be
19 intentional at every point that you can, as an
20 administrator, to make sure staff are constantly
21 being reminded of how important their actions are
22 day to day, boots on the ground, with the mission
23 of the Department or for women's services.

24 And it takes time. I mean, there's no
25 "mission accomplished" sign hanging anywhere. We

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1 are still in the trenches working hard, and we're
2 just glad to be where we are. But it takes
3 patience, it takes commitment, and it will take
4 some resource streams. That shouldn't be the
5 reason not to do it, but it certainly makes it a
6 lot easier.

7 CHAIR LHAMON: You just turned off your
8 microphone.

9 COMMISSIONER ADEGBILE: Oh, sorry. I
10 have a big enough mouth that, typically, it doesn't
11 matter, but since we're broadcasting, I'll play by
12 the rules.

13 So, I wanted to come up on this
14 conversation and ask you a little bit about how we
15 think about the idea or what narratives there are
16 out there about how reform makes things better,
17 both for the people that are incarcerated, but also
18 lifts the weight or the burden of the people that
19 are involved in the system. Meaning, there could
20 be a narrative that's a win/win. I think if we
21 have people that are entrenched and thinking that
22 the way we do it is the only way to do it, it's a
23 stressful place being in prison, regardless of what
24 side of the bars you're on. I'm not equating the
25 two, but I imagine and I understand that it can be

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1 stressful to work in prisons for everybody, for
2 lots of reasons.

3 And what is the narrative of
4 recognizing the humanity of the people who are
5 there, 95 percent of whom are coming out, and on
6 the other side, alleviating this situation, that
7 it's a zero-sum game where somebody wins and
8 somebody loses? How do we drive that narrative?

9 MS. BERTSCH: Yes, we've been trying to
10 drive that narrative for the last few years in
11 North Dakota. And really, it comes down to
12 creating an environment where the intervention
13 works. The people who work in prisons have a
14 vested stake in having an environment that is safe,
15 that creates an environment where change can occur.
16 But I can tell you that's a culture shift, just
17 like Dr. Williams talked about. And often times, I
18 think systems get so entrenched because this is the
19 way we've always done it. And sometimes you can't
20 even imagine a system different than what you're
21 already running until you see something so
22 drastically different.

23 And so, having had the opportunity to
24 see a very progressive system in Norway, and trying
25 to bring those things back, it's been really

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1 gratifying, but it's also been challenging.
2 Because the narrative, if you don't control it, is
3 soft on crime; you're coddling; what's all this
4 about? And we really talk about public safety in
5 the sense that, how do you want this person
6 returning? Do you want to make a good prisoner or
7 do you want to make a good neighbor?

8 And so, as we've been in this several
9 years, you're going to lose some staff, and some of
10 them need to go, if they can't get onboard. And
11 then, the way you actually recruit and hire, and
12 who you need to actually come and work in your
13 environments, has to change. And the biggest thing
14 to sustain these cultural changes is actually how
15 you train and coach and mentor your staff to make
16 sure that it continues. Because if the leadership
17 you have in the present is all of a sudden gone,
18 you hate to see any gains disappear because you
19 have not entrenched some of those gains in place.

20 So, there's a huge incentive that what
21 we do in our prisons isn't just about being nice to
22 the people while they're incarcerated. It
23 translates into public safety to their families, to
24 the communities that they're returning. It touches
25 every part of our community. And if we're doing

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1 something that's harming people while they're
2 incarcerated, that ripple effect will impact the
3 communities to which they return.

4 COMMISSIONER ADEGBILE: That's helpful.

5 One last one, for anybody on the panel
6 that wants to speak to it. We've spoken a little
7 bit about disparities that reflect some differences
8 with protected classes. I'm wondering if there are
9 some sorts -- we've talked about cultural fit.
10 We've talked a little bit about a difference
11 between the race of some of the correction
12 officials and the incarcerated persons. But I just
13 want to put the question out here. Are there areas
14 of discrimination that we need to know about in the
15 prison system or the U.S. Civil Rights Commission?
16 There are protected classes of people that are
17 incarcerated. Are there issues that we need to pay
18 special attention to that are affecting different
19 protected classes?

20 MS. PUPOVAC: I mean, I would say that
21 absolutely, particularly in terms of the women who
22 are incarcerated. It appears, and I think it's
23 been documented -- in doing this research, we only
24 found two academic studies, one done in the 1960s
25 on disciplinary data in the '60s in a women's and

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1 men's prison, and then, one done in a Texas jail
2 system in the '80s. And both of those found the
3 same kind of overpolicing of women's behavior that
4 we found in our data.

5 So, it seems that there are, even
6 though we now talk about a gender-responsive and
7 trauma-informed lens, it seems that there's always
8 been a different set of standards for female and
9 male inmates, and it's just been that women's
10 behavior is overly penalized.

11 MS. RESNIK: We have clear information
12 on the use of restrictive housing that ASCA and
13 Liman produced in the fall of 2017. This tells us
14 that women of color are in restrictive housing in a
15 much higher percentage than they are in the general
16 population.

17 There's been an echo across this, I
18 mean a consistent point, about the desperate need
19 for research of multivariable phenomenon to try to
20 track down more of the variables. That's also a
21 call for funding and for support, and for access to
22 information. But the information that's out there
23 says we've got a problem here. In the research now
24 available, you've got race and gender doing more
25 work than it should.

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1 MS. PUPOVAC: And I would add to that
2 women with mental health problems. They're highly,
3 vastly overrepresented in all of these groups.

4 COMMISSIONER ADEGBILE: Thank you.

5 CHAIR LHAMON: Dr. Williams, the point
6 that Professor Resnik raised about the open cabinet
7 that's now available and people can reach into is,
8 on the one hand, real exciting to hear about and,
9 also sort of counterintuitive to imagine that that
10 kind of access could be available and also fiscally
11 responsible for your institution.

12 And I wonder if there's a way to share
13 that information with other institutions, maybe
14 with the organization you just finished chairing,
15 so that other institutions also could begin to
16 learn from that best practice, maybe short of
17 litigation, as a way of moving more quickly. And
18 if there are other lessons similar to that open
19 cabinet that are analogous, also, maybe we could
20 start spreading the word for more institutions.
21 And so, I hoped maybe you could tell us a little
22 bit more about that cabinet and ways to share its
23 progress.

24 DR. WILLIAMS: Yes. So, we are open to
25 sharing of our gender-responsive, trauma-informed

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1 policies. As I mentioned, there are over 60. One
2 of the first ones was the hygiene item issuance,
3 and we're happy to share that policy. We'll send
4 you pictures of the cabinets, if that's helpful.

5 CHAIR LHAMON: That would be great.
6 Thank you.

7 DR. WILLIAMS: They're really
8 inexpensive to create. They're just Rubbermaid
9 cabinets that you pick up at Walmart or Lowe's, or
10 somewhere like that. But we would love to share
11 the policies that we have developed.

12 Probably -- and I started to put it
13 into my oral remarks, but I knew I was already
14 running close on time -- the second policy change
15 that we made was the hair and how women were
16 allowed to wear their hair. Because,
17 traditionally, they could not wear it any longer
18 than their shoulder length, and it had to be this
19 and that, and whatever. Now they can grow their
20 hair as long as they want. We don't care. They
21 can wear dreadlocks. They can do whatever they
22 want, as long as they will submit to searches, when
23 that's necessary, if there's any concerns about
24 contraband, or whatever.

25 But those, to me, are just the very

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1 basic things that have an impact on how a woman
2 feels about herself, her hair, and how she
3 presents. And giving them that flexibility to
4 decide how they want to do their hair was amazing,
5 just the difference in the women and how they walk
6 around the facility now. So, that's probably one
7 of the more important ones.

8 And then, also, our use of restrictive
9 housing. It was a three-to-four-year process that
10 got us to where we are now. We started with
11 limiting the amount of time that a woman can stay
12 in prehearing segregation, which is when they've
13 demonstrated some type of behavior that would
14 result in a disciplinary report and the staff feels
15 that they needed to be separated from the
16 population. They would put them in that unit, and
17 sometimes they would sit there for 10 days just
18 waiting for their hearing.

19 Now, if that hearing is not conducted
20 within 72 hours, we have to release them. And so,
21 there's certainty there. The women know what to
22 expect, and they also know that they'll get credit
23 for those 72 hours or 48 hours, or however long
24 they were there, onto that 9- to 10-day stint that
25 they have to do, time served, so to speak. So,

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1 they get out a little bit early.

2 I didn't mention it, but in our
3 discipline process there's also positive
4 reinforcement aspects to that. And letting some of
5 the women who have attended the programs, the
6 evidence-based programs that we have in place now,
7 that have also had a past history of having some
8 self-regulation issues, letting them take a part in
9 roundtable discussions with some of the women that
10 maybe have received a ticket recently -- it didn't
11 warrant segregation placement necessarily, but
12 maybe they just were trash-talking each other. So,
13 letting them sit at a roundtable, and letting
14 inmates actually facilitate those discussions and
15 talk about their own behaviors and how they can do
16 things differently in the future, how they might
17 prevent something like that from happening.

18 So, that's just an example of some, but
19 we will share any of the work that we've done. And
20 we already have shared it with a lot of states.

21 CHAIR LHAMON: Okay. Thank you.

22 MS. PUPOVAC: Could I add to that also,
23 one of the things that we saw in some places that
24 we visited were -- and I don't know if you are
25 doing this as well -- but kind of a modification of

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1 the traditional strip search, where women can take
2 off one article of clothing or one part of their
3 clothing at a time. So, a woman never has to be
4 completely naked and feel that vulnerability. It
5 seemed to be something that helped mitigate those
6 conflicts that lead to a strip search or that make
7 a woman fight against it.

8 Another thing, to your point about the
9 data, is that, I'll just say that, as I mentioned,
10 only 13 or 15 of the 26 states provided data to us.
11 Many states that we contacted said that they keep
12 all of this in individual paper files and just had
13 no way of knowing what their trends were and where
14 their problems were. And so, that seems to me to
15 be a good first step, an opportunity to create a
16 little more accountability to just have a system of
17 knowing what's happening and have it, you know,
18 using computers -- (laughter) -- something along
19 those lines to provide that accountability and
20 transparency, and ability to take a deeper dive
21 into who is being affected and what is happening.

22 Thanks.

23 MS. RESNIK: This, actually, also
24 relates to the idea that you would have if the
25 director had to sign off on any solitary

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1 confinement for more 24 hours, you would both get
2 centralized information and you would have some
3 way. And in some states they're trying to both use
4 either directors or regions to make it harder than
5 just an individual staff member saying a person is
6 a threat.

7 I just wanted to mention on the
8 personal hygiene, when you go abroad, you often
9 find that prisoners typically wear their own
10 clothes. Staff wears denims or something. And the
11 explanation is, of course, it would be an insult to
12 dignity to have people in these jumpsuits that are
13 marked. And so, the things that we think of as
14 natural here in terms of total constraint, in many
15 other settings, in addition to being constrained,
16 people have access to visiting. There's a whole
17 host of other practices that would be very helpful.
18 So, another institutional notion would be shopping
19 states and shopping other systems to learn about
20 alternatives.

21 CHAIR LHAMON: Great. Thank you.

22 Commissioner Kladney?

23 COMMISSIONER KLADNEY: Thank you, Madam
24 Chair.

25 Dr. Williams, I was wondering, since

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1 you're sharing so much, can you share those best
2 practices/policies with us, and send a copy, so
3 maybe we'll include them in our report?

4 DR. WILLIAMS: I would be happy to do
5 that.

6 COMMISSIONER KLADNEY: Thank you.

7 DR. WILLIAMS: Sure.

8 COMMISSIONER KLADNEY: The second thing
9 I noticed was in your statement that I read you
10 talked about the staff changes, 12 hours to eight
11 hours, and there was another one. But I am sure
12 there have been other changes as well. Do they
13 also have focus groups? Do you have focus groups
14 for your staff?

15 DR. WILLIAMS: Absolutely. And I think
16 I mentioned in my written statement that, you know,
17 when you have the types and the amount of changes
18 that are visibly taking place that impact the
19 offenders, sometimes staff will become resentful if
20 you're not also taking care of their well-being.
21 So, some of the remarks that the other panel have
22 made, it's very important to include them in the
23 process from the start. We've included them in
24 almost all of the focus groups, if not all,
25 probably all of them.

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1 We also survey our staff routinely to
2 make sure that we are hearing from them, what their
3 views are of the changes that have been made. And
4 we invite them to come forward with ideas that they
5 have about how things -- just like we mentioned the
6 disciplinary policy, and midway through,
7 recognizing that there was changes that would
8 benefit staff and inmates, if they were made. So,
9 we were making those changes.

10 So, having the type of culture where
11 staff feel valued, No. 1, and that they feel that
12 their ideas are appreciated, and that they are
13 encouraged to bring those ideas forward is
14 important. We have ongoing staff training and
15 education, as I was mentioning to Jessica earlier,
16 and that is equally as important.

17 Allowing some of our staff to go visit
18 other facilities and draw from what they see there,
19 all of those type things are important. But staff
20 wellness has got to be at the top of the list and
21 making sure that they have what they need, and that
22 they feel safe.

23 COMMISSIONER KLADNEY: And I think this
24 is for Director Bertsch and Dr. Williams, but
25 anybody else can chime-in, which I'm sure you all

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1 will.

2 This morning I was asking some
3 questions about the FOQs, and whatever. I don't
4 know if you use the BFOQ or if perhaps you just
5 assign certain people to certain posts in your
6 facility, which would be like a shower post or
7 whatever. Perhaps males can run the sally port or
8 searching, or things like that.

9 Can you summarize how you function like
10 that, each one of you?

11 MS. BERTSCH: North Dakota is a right-
12 to-work state, and we assign the best person for
13 the best post. There is no right to a certain
14 post. So, we assign the best-trained person for
15 the post. So, we don't really worry about BFOQs,
16 but we do try to hire -- in the women's prison, we
17 obviously want most of the folks working in the
18 prison to be women. Men, we actually like a good
19 mix of women. So, in our medium-custody facility,
20 we actually have about 40 percent of the
21 correctional officers are women, because they bring
22 a different bent to the environment.

23 So, we don't really worry about BFOQs
24 because we have the authority to put the best
25 person in the best post.

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1 COMMISSIONER KLADNEY: Thank you.

2 Dr. Williams?

3 DR. WILLIAMS: Right. We do not
4 necessarily have BFOQs, but we have gender-specific
5 posts. Many of those posts were already declared
6 gender-specific prior to a staffing analysis that
7 we had conducted three years ago, which actually
8 looked at all the different posts and staffing
9 through the lens of being gender-responsive and
10 trauma-informed. And so, there were some
11 additional posts that were added to that list of
12 gender-specific posts through that process. So, I
13 don't know the exact number, but any area of the
14 facility where a woman's privacy is an issue, it's
15 a gender-specific post.

16 In addition to that -- I just lost my
17 thought as to what I was going to say.

18 COMMISSIONER KLADNEY: That's okay. It
19 happens to me all the time.

20 (Laughter.)

21 DR. WILLIAMS: Yes. I'm talking too
22 much, I guess.

23 COMMISSIONER KLADNEY: More every day.

24 DR. WILLIAMS: I'll think of it in a
25 moment. Oh, I know what it was.

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1 In 2012, which was at the beginning of
2 when the lights started to be cast on Tutwiler, our
3 staffing ratio there was 70 percent male
4 correctional officers to 30 percent female
5 correctional officers. Today, I'm happy to report
6 we have 65 percent female correctional officers and
7 35 percent male.

8 And I do think that's critically
9 important. It is good to have a nice blend, but
10 it's important, because of those gender-specific
11 posts, to have the numbers of female officers there
12 to make sure they're staffed with female officers.

13 COMMISSIONER KLADNEY: Has that led to
14 any more problems in the facility?

15 DR. WILLIAMS: I wouldn't call them
16 problems, but, clearly, you know, child care is an
17 issue for men and women, if they're single parents
18 for sure, and even if you're not single parents.
19 But a lot of our female staff are single parents.
20 And so, child care is of concern. And that's one
21 of the reasons that we went from 12-hour shifts to
22 8-hour shifts, because 12 hours is a long time to
23 leave your child in daycare. And so, that's been
24 helpful. But, outside of that, I can't say that
25 there's been any problems or challenges created

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1 because of the difference.

2 COMMISSIONER KLADNEY: Thank you.

3 Professor, do you have an opinion?

4 CHAIR LHAMON: And we are past time.

5 So, we will hear the answer and, then, conclude the
6 panel.

7 MS. RESNIK: I think you've heard from
8 many people concerns about staff and the
9 interaction. If I recall right, in Alabama right
10 now, people are paid \$32,000 a year, roughly. So,
11 one of the questions is, one is, how do you get a
12 cheaper system? You have fewer prisons. Another
13 is, in the places where you do have incarceration,
14 you have to be sure that the facilities for the
15 people living in it and for the people working in
16 it are sufficient and adequate for safety, and that
17 the people who are in it are trained. So, there's
18 also, what's this training? Six weeks or two
19 years? Some European systems have two years before
20 you staff a facility in terms of that.

21 And then, the other question is pay.
22 And there, going to the question around the
23 country, wildly different amounts of pay.

24 And also, remoteness. I was told by
25 the Director of Alabama how challenging it is when

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1 a prison is situated in a remote place to have
2 adequate staff and services.

3 So, on your recommendation list, I
4 think I've just added more.

5 CHAIR LHAMON: Thank you very much to
6 this panel.

7 We will reconvene at 2:40.

8 And just so folks know, Commissioner
9 Yaki had to leave to catch a flight. So, it was
10 not a comment on the panel when he departed, and we
11 look forward to seeing him.

12 COMMISSIONER ADEGBILE: I thought it
13 was me.

14 (Laughter.)

15 CHAIR LHAMON: It was a comment on you,
16 yes.

17 (Laughter.)

18 (Whereupon, the above-entitled matter
19 went off the record at 2:35 p.m. and resumed at
20 2:42 p.m.)

21 **PANEL FOUR - REHABILITATIVE OPPORTUNITIES FOR**
22 **WOMEN IN PRISON AND LIFE AFTER PRISON**

23 CHAIR LHAMON: We will now proceed with
24 our fourth panel, which is titled "Rehabilitative
25 Opportunities for Women in Prison and Life After

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1 Prison".

2 And as a reminder, given some of the
3 topics that come up with regard to women in prison,
4 I remind the panelists and the public and my fellow
5 Commissioners that, since 1983, Congress has
6 prohibited the Commission from taking in or serving
7 as a clearinghouse for information about abortion.
8 So, please tailor your remarks accordingly.

9 In the order in which they will speak,
10 our panelists are: Chief Wendy Still, Chief
11 Probation Officer, Alameda County Probation
12 Department; the Honorable Brenda P. Murray, Co-
13 Chair, Women in Prison Committee, National
14 Association of Women Judges; Becki Ney, Principal,
15 The Center for Effective Public Policy; Susan
16 Burton, Founder, A New Way of Life Reentry Project,
17 and Brett Dignam, Vice Dean of Experiential
18 Education and Clinical Professor of Law, Columbia
19 Law School, and as a point of personal privilege,
20 my former law professor when I was a student at
21 Yale Law School in the prison clinic.

22 So, welcome.

23 Chief Still, please begin.

24 MS. STILL: Thank you very much. It's
25 an honor to be before the Commission today.

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1 First, I want to commend the Commission
2 for the work that you're doing. I have almost 40
3 years of criminal justice experience, with over 30
4 being in the prison system, and then, the remainder
5 being out in community corrections. I'm a 42-year
6 public servant. So, I just feel like I've had this
7 discussion over and over again and relived parts of
8 it today. Your work is just so important.

9 I'm going to talk about rehabilitation
10 and reentry into the community, but I also want to,
11 first, start off for a minute by talking about the
12 transformation that the prison system in California
13 went through as it relates to women prisoners. And
14 it was driven by the Legislature's deep
15 dissatisfaction with the outcome and the system and
16 the services available for women. Had it not been
17 for that type of high-level support and oversight,
18 I don't believe that the transformation would have
19 occurred, at least back then, "back then" being in
20 the 2005 timeframe.

21 How I really became majorly involved in
22 the work with women offenders and the reform was,
23 back then, I was the Southern Regional Prison
24 Administrator of 40,000 inmates; 50,000 staff was
25 my responsibility. We had a new Governor. The

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1 Governor wanted to reorganize. The Legislature
2 wanted a high-level women's executive position to
3 oversee and to transform the prison system. So, I
4 was that person.

5 How I became that person was my first
6 two issues that I dealt with was the shackling of
7 female prisoners during pregnancy and, also, the
8 elimination of the cross-gender pat search. I'm
9 very proud to say California I believe was the
10 first to put regulations in place to prohibit the
11 shackling of women during pregnancy and during
12 birth; in addition to that, to eliminate the cross-
13 gender pat search. Several other states now have,
14 but there's not an across-the-nation ban on those,
15 which there should be.

16 There also was a requirement for the
17 new Governor, then Schwarzenegger, to basically
18 present a plan to the Legislature on how to
19 transform the prison system. And so, I wrote that
20 plan. And it was amazing. I have never read
21 anything in government that was over a 70-page
22 document that not one word was changed.

23 And that was because of the input of
24 experts. NIC was of assistance. We basically
25 contracted with the best experts on women, working

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1 with women offenders at that time, as well as
2 advocates and women that were actually in the
3 facilities themselves.

4 So, with all that said, what came of
5 that was a writing of Penal Code 3430. And why
6 there is a Penal Code 3430, because the State was
7 doing all the transformation at the time, and it
8 was I knew that, when I left my job and different
9 Assemblymen and Senators that were in key positions
10 that were unhappy with the circumstances left their
11 positions, that there was a great possibility that
12 there would be a backwards slide. And we were
13 right.

14 So, anyway, what the Penal Code
15 required was that, for each woman coming into
16 prison, that there would be an individual treatment
17 and rehabilitative plan that was aligned services
18 that the Department would review and update, and
19 create a system of classifications specifically
20 related to women prisoners, women inmates. Also,
21 that there would be a staffing review; that
22 specialized training for officers would take place,
23 working in women's prisons; that programs would be
24 created that were gender-responsive and trauma-
25 informed. I remind you now, we're in the 2007-08

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1 timeframe, right? So, this is not new news. That
2 substance use disorder services, mental health
3 services, health care, family reunification,
4 education, wraparound services would be provided.

5 So, with that said, there were a number
6 of efforts that were undertaken, creating the
7 Individual Treatment and Rehabilitative Plan,
8 working with the University of Cincinnati to create
9 the risk/needs assessment that was gender-
10 responsive. Dr. Salisbury spoke to that, as well
11 as Dr. Pat Vanvoorhis. They basically created,
12 utilizing the women in the correctional facility
13 that we have in Chowchilla, basically to help them
14 with that study, and then, also creating trauma-
15 informed programs.

16 We had gender-restricted posts. We
17 increased the number of gender-restricted posts.
18 And we did an awful lot of research related to
19 BFOQs, provided that to Washington State. And as
20 you heard earlier, Brenda Smith was just critical
21 in basically the development of that material that
22 went to the State of Washington, that helped them
23 basically fend off the lawsuit from the unions
24 regarding the BFOQs.

25 Now I would like to fast-forward. When

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1 I heard today 12,000 inmates in the federal system,
2 I was really stunned. And the reason I was,
3 because, back then, California's prison women's
4 population was 11,470 women. We were the largest
5 prison system in the nation at that time that had
6 women. But now, I'm happy to report we've reduced
7 that number by 50 percent.

8 How? By basically creating alternative
9 sentencing programs out in the communities, closer
10 to; also, by the giving of financial incentives to
11 counties to basically reduce the number of women
12 and men coming to State prison; and also, creating
13 grants to the local counties, basically, so that
14 women can have access to services as well as men.

15 In addition to that, we've changed
16 laws. We've changed our drug laws and a variety of
17 things. But, again, happy to report that we've
18 seen an almost 40 percent reduction.

19 I'm short on time. So, what the
20 important point is, when you're looking at trying
21 to transform prisons, it's creating availability of
22 actual number of programs, because there is an
23 inconsistent number of programs in men's prison as
24 compared to women's prisons. Typically, male
25 prisons are better funded. Women's prisons are not

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1 as well funded in terms of the type of programs.

2 And again, you don't want cosmetology.
3 You don't want these programs that, when women are
4 released, they basically are either unemployed or
5 underemployed. Because when women are released,
6 and they do go home, basically, what they have to
7 deal with is they do not have their benefits
8 enabled. They do not have identification. They're
9 shackled to debt from previous probation violation
10 sentences, fines, and fees, but, yet, that debt is
11 waiting for them when they return.

12 And in addition to that, they have
13 family reunification issues. You've heard earlier
14 about the parental, losing their parental rights,
15 and trying to get them reinstated without any kind
16 of funding economically to help them with legal
17 support, basically to get their parental rights
18 reinstated.

19 Lastly, I'm happy to report that my
20 County is partnering with CDCR the prison system,
21 and we're mapping the system within the prison. We
22 have a team in the women's prisons and in the male
23 prisons, so that the system that's inside the
24 prison complements those benefits and services that
25 are available when the inmates come home, right,

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1 when they become residents again, and that we have
2 the housing, the education, the career/technical
3 needs, and all the other benefits, family
4 reunification, and trauma-informed practices to
5 support them.

6 Thank you.

7 CHAIR LHAMON: Thank you, Ms. Still.

8 Judge Murray?

9 JUDGE MURRAY: I'm a little out of my
10 element --

11 CHAIR LHAMON: I think your microphone
12 turned off. Thank you.

13 JUDGE MURRAY: Okay. I'm a little out
14 of my element because all these professors, with
15 all these people with vast experience, know a lot
16 more than I do. So, I've been sitting here all
17 morning, and I just want to pick up some things and
18 see if I can add anything to this.

19 I represent the National Association of
20 Women Judges, which was started in 1979 to work for
21 gender equality in the justice system. And we
22 started a Women in Prison Program in 1991,
23 basically, as the result of Judith Resnik, who
24 causes trouble wherever she goes.

25 (Laughter.)

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1 JUDGE MURRAY: But, anyway, when we
2 first started, they told us that women judges had
3 no right to get into this issue; that under the
4 Constitution, we were the third branch and this was
5 the first branch's thing. And so, we shouldn't
6 have anything to do with this. Anyway, we have
7 overcome that.

8 The two points I would like to make
9 with you is that the top judicial people in the
10 United States, Justice O'Connor and Pat Wald, have
11 always been members of this Association. So,
12 somehow, people thought we were important, and they
13 were able to get us meetings. We have met with
14 every Director of the Bureau of Prisons. Okay?
15 And we have told them, quite blunt, you know, "You
16 are doing a lousy job."

17 (Laughter.)

18 JUDGE MURRAY: And they have given us
19 coffee, donuts, nothing. We haven't accomplished a
20 damned thing except -- except -- Alix McLearn
21 really, we pushed that job because they had nobody.
22 They had a lady with no background. So, Alix, we
23 got that established.

24 But they've allowed us to visit every
25 prison, and we've visited several of them. In

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1 fact, we were the group that went to New York and
2 that Metropolitan Detention thing, and it was Judge
3 Gonzales and Judge Betty William, my Co-Chairs, and
4 there's Judge Bev Cutler. We went and we saw.

5 They had over like 120 women in two
6 rooms where they ate, they went to the toilet, and
7 they slept in these two rooms, identical. And they
8 were keeping them temporarily. And it was
9 like -- I don't know; Betty, how long was it? -- it
10 was like two years they were there.

11 And then, when we got back to
12 Washington and we said it to them, they said they
13 didn't know about it; they didn't really realize.
14 It was all somebody's fault in New York who didn't
15 tell them that -- I mean, it was absolutely
16 inhumane.

17 So, we have done pretty good work, some
18 of it, but we haven't done half as much as we
19 should have. But we got a meeting with a big shot
20 in the White House, and I can't really tell you
21 who. So, we get ready for this meeting, and all of
22 us get all pepped up and everything. And we go in
23 there and we've got to make our case that the
24 Bureau of Prisons is, you know -- and we get in
25 there and we say, "Now we want to talk to you about

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1 the Bureau of Prisons." And the person says, "It's
2 a mess." And we said, "What?" And they said,
3 "It's a mess. We know it's a mess." And so, all
4 our arguments went out the window. Why they didn't
5 fix the mess, I don't know, but they admitted,
6 these big shots that knew what was going on
7 admitted that it was a mess.

8 So, the questions you've asked about
9 data, that's pie in the sky. I mean, you can't get
10 any data. They don't keep this kind of data that
11 you think. They are -- "disorganized" is a nice
12 word.

13 Now Alix told the gentleman over there
14 that there were gynecologists. When we visited
15 Hazelton, West Virginia, there was no gynecologist
16 on staff, and there were a large proportion of
17 those women who spoke Spanish. There were no
18 Spanish officers. The women complained about it.

19 What we insist, when we visit a prison,
20 is that we meet with the women prisons without any
21 guards around. And I don't know why, but the
22 Bureau of Prisons has always let us do that. So,
23 we have a private meeting with the women who are
24 residing in the prison, and they tell us things
25 which are not what the staff of the prison thinks.

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1 So, okay, there's a whole lot of other
2 stuff I wanted to tell you.

3 Besides the big national thing we do,
4 we do a book club and we do programs in New York.
5 The judges in New York do a lot. The judges in
6 Alaska do a lot. The judges in Florida do a lot.
7 We run book clubs. We run reentry programs for the
8 women.

9 If you ask the women about their
10 reentry programs, they will tell you they're lousy;
11 they're no good. And the one thing about Hazelton,
12 when we visited Hazelton -- I know it's over 500
13 miles -- some of those women were there from far,
14 far away, and they volunteered to go there because
15 they were promised programs. When they got there,
16 there were no programs. But those women, they want
17 to succeed, not all of them. You know, some of
18 them are worthless. But most of them really want
19 to improve themselves, and they're not getting an
20 opportunity to do it.

21 Now I want to make sure, I've given you
22 policy recommendations from the New York State
23 because Betty will shoot me if I don't give you
24 another copy. Okay.

25 And then, one thing I wanted to tell

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1 you, which is just absolutely dreadful, in my book
2 club that we run, we've had one suicide about three
3 or four months ago. And then, the prison had
4 another suicide four years ago. And they had to do
5 a report. Maryland law required them to do a
6 report because this lady had a mental condition.

7 Restrictive conditions apply to
8 individuals with serious disabilities. This is in
9 the Maryland women's prison. Violates the 8th
10 Amendment of the United States Constitution,
11 Article 25 of the Maryland Constitution, the
12 Americans with Disabilities Act, and Section 504 of
13 the Rehabilitation Act.

14 I brought copies of this report. If
15 you read this report, you will not sleep tonight, I
16 promise you. We've got one Maryland legislator who
17 has agreed to introduce a bill to make that prison
18 shape up on the way they're holding their mental
19 prisoners.

20 Now the women tell me that they're
21 stuck, the warden's stuck because these women have
22 mental conditions. They should go to a mental
23 hospital. There's no mental facility to send them.
24 So, the courts are sending them to the prison. And
25 then, the warden is stuck because she can only keep

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1 them in solitary for a couple of days, and they
2 have to release to the general population. The
3 other day, one woman with a pen went into the eyes
4 of her roommate. And so, anyway, okay.

5 I told the women that I was coming here
6 today. So, one of the inmates wrote an article,
7 part of her writing class. And so, I've brought
8 that for you.

9 You keep talking about recommendations.
10 I think you should dump that. You should talk
11 about demands and orders, that you're in a position
12 to maybe fix things. You don't want
13 recommendations. They'll ignore your
14 recommendations. Nobody gives a damn about these
15 people.

16 I've tried to get the women's
17 legislator in Maryland --

18 CHAIR LHAMON: Thank you very much,
19 Judge Murray.

20 I think several of us need to turn our
21 microphones off, and then, yours will turn on.

22 MS. NEY: There we go. All right.

23 So, thank you very much for asking me
24 to come today. I am Becki Ney, one of two
25 Principals at The Center for Effective Public

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1 Policy, where I've worked since it was established
2 in 1981. Since that time, we have worked on
3 numerous criminal justice reform efforts in this
4 country, including the National Resource Center on
5 Justice Involved Women, which I've directed since
6 2010.

7 We work in partnership with the
8 National Institute of Corrections, who I think you
9 have learned today without whom there would not be
10 a women's risk and needs assessment tool, without
11 whom there would not be a gender-informed practices
12 assessment, without whom there would not be a
13 federal presence that has taken on this issue in
14 some of the ways that you have. They provide
15 training and technical assistance to the field, as
16 do we, and we represent that organization who can
17 disseminate and provide all the information that
18 Alabama and North Dakota, and others, are doing,
19 which we do.

20 You've asked me today to talk about
21 rehabilitative opportunities for incarcerated women
22 and their preparation and process for a successful
23 transition and reentry. I know that you will talk
24 more eloquently about that than I. But let me put
25 that into some context for you just for a moment.

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1 We have had numerous conversations
2 today about tampons, toilet paper, and the use of
3 restraints for pregnant women. These are the easy
4 things to do. In the 21st century in the United
5 States of America, I would hope that we would be
6 past those conversations.

7 Now I'm going to talk about the hard
8 stuff. All right. To my knowledge, there have
9 been two comprehensive studies that have been
10 specifically looking at institutional program
11 availability for men and women. One was conducted
12 by Mary Morash and her colleagues in 1994 on
13 programs that were established in the 1980s, not
14 very relevant to our discussions today.

15 In 2013, Courtney Crittenden built on
16 that study in her doctoral dissertation. So, in an
17 unpublished doctoral dissertation, we have a little
18 more data that's a little more current that
19 suggests that there may be more programs for women
20 than men. However, they are largely gendered
21 programs like cosmetology, sewing, textiles, and
22 the like, and that they may or may not be
23 appropriate.

24 The most common programs we find in
25 prisons for both men and women are educational

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1 programs, in part, because there is a lot of
2 legislation in this country that requires folks to
3 have a GED. Without a GED, you also can
4 participate in some states in other kinds of
5 programs like vocational education or prison
6 industries, or other kinds of programming. We have
7 work programs inside prisons such as prison
8 industries, vocational programs, work assignments
9 in the kitchen and maintenance and laundry.

10 And we have drug treatment programs
11 because of the high incident of substance abuse
12 among incarcerated populations.

13 We also have a variety of other kinds
14 of programs, religious and Bible classes,
15 recreational programs, special events, and things
16 that are not evidence-based, but provide
17 opportunities for women and men to participate in
18 things other than being idle and laying around in
19 beds and being bored out of their minds.

20 In terms of treatment programs, we find
21 both gender-neutral, those programs that reduce
22 recidivism for both men and women, evidence-based,
23 and gender-responsive programs, which are
24 increasing, but, still, we have a long way to go.
25 These are programs that address the unique needs of

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1 women.

2 While gender-neutral programs do work
3 to reduce recidivism, as I suggested, we know we
4 can do better for women. And, in fact, in a 2016
5 meta-analysis conducted by Kelley Blanchette and
6 her colleagues in Canada, she found in over 37
7 studies that included nearly 22,000 women that
8 women who participated in correctional
9 interventions had 22 to 35 percent greater odds of
10 community success than those who did not
11 participate in evidence-based programs for women.

12 But just because there are programs
13 doesn't mean they are necessarily available. In my
14 nearly 40 years of working in corrections, it has
15 never been said to me once by anyone, staff or
16 women, that "We have enough programs here." Never.
17 The women will tell you we don't have enough
18 programs. We don't have enough meaningful
19 programs; that we have -- forgive my
20 words -- "stupid programs that have nothing to do
21 with the reasons why I got here or who will aid me
22 in anything going out of this facility".

23 Now there are lots of reasons for that,
24 and it's not for lack of trying. When resources
25 come in tight budget situations, the programs are

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1 the first to go because that's the soft stuff we
2 can get rid of. The type of facility -- as we've
3 heard, many women's prisons were built for men, and
4 then, women were put in them -- we don't have
5 enough program space. We have movement issues.
6 The program areas are often in a different part of
7 a facility than where the women are housed.
8 Discipline issues, security level, sentence length,
9 optimal group size, all these things impact who can
10 participate in prisons.

11 Attached to my remarks is a chart of
12 some of the evidence-based programs for women that
13 we know are successful by research.

14 We also know we can't do programming in
15 a facility for just a small group of women. Those
16 women who for the first time participate in a
17 program that may be meaningful to them, then, go
18 back to their cell block where other women are not
19 participating in programs, with staff who have not
20 been trained in how to work on them, and then,
21 sometimes we make things worse, I think, because we
22 show them how things can be, and then, we do not
23 support their changes in the ways that can be
24 helpful.

25 In surveys conducted by my Resource

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1 Center over the past eight years in nine women's
2 facilities that included more than 4,000 women,
3 only 37 percent felt that staff were helping them
4 with information about resources and services in
5 the community. That means 63 percent of them say,
6 "This is not helpful to me when I get out."

7 We know from the research that 60
8 percent of women released from incarceration are
9 rearrested. Most are returned for technical
10 violations, meaning they violate a rule for
11 supervision, not a new crime. So, it says to me
12 that we have to have a larger continuum than just
13 looking inside facilities.

14 In summary, I guess I would say,
15 because I'm running out of time, that women are
16 better served in the community, as you've heard
17 today. There are about 114,000 women in state and
18 federal facilities. That is a number that we can
19 wrap our hands around. We're not talking millions
20 of people here. It ought to be a solvable problem.
21 We have research. We know what we need to do. We
22 simply must act and have the will and courage to do
23 it.

24 CHAIR LHAMON: Thank you very much, Ms.
25 Ney.

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1 Ms. Burton?

2 MS. BURTON: Thank you so much for this
3 opportunity to be here. If I had thought back 20-
4 some years ago, I would never have imagined myself
5 in D.C. at the Commission talking with you all
6 about the programs for women who are incarcerated.

7 I was incarcerated over 20 years ago.
8 For 20 years, I cycled in and out of prison, trying
9 to find a way, trying to find a foot up.

10 I'm going to tell you a little story,
11 and it's not just my story. This is a story of the
12 women that we incarcerate, over 70 percent of them.

13 I lost my son. He was 5 years old.
14 His name was "KK". And that was after I had
15 endured a lifetime of trauma, abuse, all types of
16 abuse. And when I lost KK, I just couldn't handle
17 it anymore and I began to drink. And I drank
18 alcoholically, and that escalated to drug use.

19 An LAPD detective accidentally killed
20 my son. There was nothing for me to help me with
21 the loss, the trauma, the grieve. So, I drank, and
22 then, the drug use, and then, prison.

23 I didn't go to prison one time. I was
24 sentenced to prison six different times in a 20-
25 year period. No one thought enough to invest in

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1 me, that I might need some help instead of
2 punishment.

3 And we're sitting here today and we're
4 talking about how to make prison a little bit
5 better, but the reality for us is prison is made
6 for punishment. It's not made to be bettering the
7 people there, the way it's constructed, the way
8 it's rolled up. It's made for punishment, and it's
9 doing exactly what it was made to do.

10 I left prison six times. Got off a bus
11 downtown Skid Row, LA County, and tried to make a
12 life for myself. It was impossible. I had no ID.
13 I had nowhere to go. I had no good contacts. So,
14 I failed and I went back until I got help.

15 After getting help, I started A New Way
16 of Life Reentry Project, where in my home I began
17 to take women in. And now, it's a 20-year
18 organization and over a thousand women have come
19 out of prison. And I go back to prisons and, you
20 know, I try to usher them into safety and create an
21 environment that would allow them to heal, not only
22 from their past experiences, but from the trauma of
23 incarceration. I call leaving prison "You need to
24 detox," detox the trauma, and just try to find
25 yourself and connect with yourself.

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1 When I was in prison, I begged for
2 programs. Before I went to prison, I begged the
3 courts for something other than prison, but I was
4 always sent to prison and there was never enough
5 programs there for me.

6 So, out of the thousand, over a
7 thousand, women who have come through the doors of
8 A New Way of Life, nobody has -- I'll say 30
9 percent of them might leave the prison with an ID.
10 If you leave prison and you've been out of the
11 system over 10 years, if you've been in prison over
12 10 years, you are erased from everything in our
13 world, in our environment. You know, no ID in the
14 DMV system. We have to go to get a birth
15 certificate. I've had where I flew to another
16 state to get a girl a birth certificate because we
17 couldn't ID her and we couldn't work with the
18 agency.

19 The patrol department, her patrol
20 officer could have made a couple of calls and used
21 that government document to get her birth
22 certificate, but they didn't think enough and
23 wouldn't invest in that woman. But we got her what
24 she needed.

25 The lack of the ability for these

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1 correctional systems to see the humanity of people,
2 to understand the potential of people, it's just
3 not existent. They shuffle and they push, and they
4 push people around, and they don't really meet the
5 needs and don't even see where an investment could
6 be made, or there would be a payoff on an
7 investment.

8 I've been sitting here today and I've
9 heard the word "offender" used in the same
10 statement you're talking about trying to help me,
11 but you're calling me a really nasty name and it
12 just doesn't jive.

13 When we talk about coming out and
14 starting your life over, we have to fight all the
15 way. We always have to go the extra mile. I
16 recently wrote a book. I took that book into 30
17 states, into 30 prisons, and sat down and big book
18 talks with women. And this is the prison edition,
19 the paperback that I made of that book for women.
20 Some prisons wouldn't let it in. Some prisons did
21 and I went to those prisons.

22 I recently applied for global entry
23 because I was traveling so much. I was denied
24 because I have a prison history.

25 My insurance policy or the insurance

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1 policy I was going to buy asked me if I'd ever been
2 incarcerated, and I checked the box, and I got
3 denied, insurance, you know, life insurance. They
4 call it "death insurance," life insurance, you
5 know. I was denied.

6 But the struggle of people, of women,
7 before, during, and after incarceration is just a
8 little -- it's horrendous.

9 CHAIR LHAMON: Thank you, Ms. Burton.

10 MS. BURTON: My time's up.

11 CHAIR LHAMON: Professor Dignam?

12 MS. DIGNAM: Well, thanks a lot for
13 having me speak after Ms. Burton.

14 (Laughter.)

15 CHAIR LHAMON: Your microphone is not
16 on.

17 MS. DIGNAM: Okay. I'm going to try to
18 adapt my remarks and fill in the blanks because,
19 obviously, there's been a lot of overlap.

20 And I just want to thank the
21 Commissioners for your sustained engagement and
22 attention to this really important range of issues.

23 It has been my great privilege to
24 represent incarcerated women at the federal prison
25 in Danbury, Connecticut, and state prisons in both

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1 Connecticut and New York, for more than two
2 decades. I have done this work in the context of
3 law school clinics, first at Yale Law School and
4 now at Columbia Law School.

5 The women who have lived this
6 experience have generously shared their lives and
7 taught my students how the policies and law we
8 study in the classroom are implemented in practice.
9 The clinic now called "Challenging the Consequences
10 of Mass Incarceration" focuses on conditions of
11 confinement.

12 Federal courts have appointed us to
13 cases that have included challenges to federal
14 policy that allowed invasive pat searches by male
15 officers of women participating in a residential
16 trauma treatment program; medical claims, including
17 an unsuccessful attempt to obtain a necessary
18 hysterectomy, and then, breast cancer treatment for
19 one person; the right to wear a hijab in an
20 official prison identification photo, and sexual
21 assault by correctional staff.

22 Our current docket includes a number of
23 women, most of whom have extensive histories of
24 abuse and have been convicted of violent crimes,
25 who are seeking release from the New York State

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1 Board of Parole. Rehabilitative programming is
2 central to that process, and the obstacles to
3 successful reentry are all too apparent in our
4 work.

5 So, when I looked at the topic of this
6 panel, and it was rather broad, "Rehabilitative
7 Opportunities for Women in Prison and Life After
8 Prison," I went back to the data, to some of the
9 statistics. And I think I have some that might
10 plug into some of the questions that have been
11 asked.

12 But we're at a moment in this country
13 where there are a variety of people who are
14 actually saying that they're interested in
15 reforming the system. And we should have no
16 illusions that one of the primary drivers for that
17 is the cost of mass incarceration.

18 A few years ago, when Pew a study that
19 documented that 11 states were then spending more
20 on incarceration than education, people took
21 notice. At the same time, communities who had
22 serious unmet educational and other needs had
23 unprecedented numbers of their parents in prison,
24 on parole, or probation.

25 But more compelling to many, because it

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1 was quantifiable, and still is, is the cost of
2 incarceration. Incarceration is, of course, far
3 more expensive than pretrial diversion, home
4 confinement, or probation and parole, but expenses
5 of the entire system have prompted many to focus on
6 recidivism as the metric by which we can measure
7 rehabilitation.

8 Rehabilitation is both a sentencing
9 goal and a predicate to parole. I acknowledge that
10 pretrial diversion is not really within the scope,
11 the very large scope, of what you asked us to talk
12 about, but I would urge you to think about it and
13 to look at footnote 2 of my written testimony,
14 which cites a case in the Eastern District of New
15 York where there's a very innovative pretrial
16 diversion program and a very compelling story of
17 one woman whose felony conviction was set aside
18 when she successfully completed the pretrial
19 diversion program.

20 So, recidivism facts, a few. Women
21 have lower rates of recidivism than men. The U.S.
22 Sentencing Commission became concerned about
23 recidivism and has done a series of reports that
24 focus on sentencing and what factors correlate with
25 recidivism.

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1 In 2016, it analyzed more than 25,000
2 people who were released from prison in 2005. One
3 of the problems that we faced with data collection
4 is, by the time we get a dataset and completely
5 analyze it, 10 or 15 years has gone by. So, with
6 that taken into account, I did the best that I
7 could.

8 The Commission considered gender, along
9 with several other factors, notably, race and
10 education. Male offenders were rearrested at
11 higher rates, 52.2 percent, than females, 36.4
12 percent. Those without a high school diploma had
13 the highest recidivism rates, 60.4 percent, while
14 those with some college failed at a lower rate of
15 39.3 percent, and college graduates -- we used to
16 fund college education in prison, but, in 1994,
17 when the Pell Grants ended for prisoners, that was
18 foreclosed and dramatically decreased -- college
19 graduates at the lowest rates of recidivism, 19.1
20 percent.

21 So, rehabilitation matters. I applaud
22 the Commission for looking at it. It matters both
23 for parole and successful reentry. Parole boards
24 typically look at exactly the same characteristics
25 that someone looks at in sentencing. They want

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1 documentation of rehabilitation, which is
2 programming in prison. If you don't have the
3 programs and the certificates, and you can't
4 demonstrate that the risks that led you there have
5 been treated, your chances for parole plummet.

6 So, women are less violent than men, as
7 you've heard. They're mothers. Ninety percent of
8 them, according to the Bureau of Prisons, have
9 experienced trauma. They have different mental
10 health needs.

11 There are a few programs that I know
12 you're familiar with because you've looked at the
13 OIG report, the recent report on Women in the
14 Federal System. And I recommend that you look
15 closely at the resolve, the trauma program, and the
16 findings in that report. There are very concrete
17 suggestions about staff vacancies and the low level
18 of staffing.

19 Also, if you take a look at the
20 residential drug program and the women who were in
21 those programs, some of the things that recent
22 reports have found is that there are 11 of those
23 programs provided for women at nine facilities.
24 There are 72 of those programs provided for men at
25 65 different institutions. There are only two

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1 Spanish residential drug programs, one for men and
2 one for women. And this is at a time where 7200 of
3 the 13,000 women were convicted of drug offenses.

4 CHAIR LHAMON: Thank you, Professor
5 Dignam.

6 MS. DIGNAM: I have more, but I see
7 that my time is up.

8 CHAIR LHAMON: Thanks very much.

9 So, I'll open it for questions.

10 Commissioner Kladney?

11 COMMISSIONER KLADNEY: Thank you.

12 Actually, speaking to programming, Ms.
13 Ney, you spoke very passionately about the programs
14 that are needed. I take it in most prisons they
15 don't exist? Drug programs exist; trauma program
16 exists. I'm talking about vocational programs,
17 basically. Talk to me about where they don't
18 exist, but also talk to me about where they do
19 exist and capacity to take people into them.

20 MS. NEY: Sure.

21 COMMISSIONER KLADNEY: Anyone else can
22 respond, too.

23 MS. NEY: So, I think we have more
24 programs in existence that address trauma, as you
25 know; that address the risk factors that are unique

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1 to women, different from men. So, while we have
2 drug programs as being one of the more common
3 programs in prisons for men and women, that doesn't
4 necessarily speak to what they're doing in that
5 program. So, some may call them a treatment
6 program, and it's really a support group. It's not
7 what I would call a treatment program facilitated
8 by a clinician or a professional who understands
9 how to do that. And it's certainly not a holistic
10 program in some of the ways you've heard earlier
11 that are sort of talking to women about all the
12 different ways in which substance abuse kind of is
13 part of what she's doing.

14 I mean, you've heard from Ms. Burton
15 about what it was that triggered her substance use.
16 That's true for many women. So, it's not that
17 substance abuse is the particular issue. We're not
18 treating the issues that got us there to begin
19 with, which has to do with sort of the trauma and
20 the past history, et cetera.

21 So, I find, at least in all of the
22 prisons I go to, I find that there are programs.
23 Typically, 10 to 20 percent, I would guess, is what
24 I see about the capacity and the number of people
25 who can participate in them. I have never seen a

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1 prison where everyone is getting any programming
2 who wants it -- never. Some of that's about money;
3 some of that's about the nature of prisons; some of
4 that's about the capacity, as you say.

5 So, if I have a lot of women coming
6 into a facility who are there for, say, two years
7 or less, and I want to make sure they all get a
8 program before they leave, and the program is 14
9 weeks long, I'm constantly churning the short-term
10 women through that program, and the women who were
11 there for a long time never get into it. So,
12 that's some of the dilemma.

13 COMMISSIONER KLADNEY: Ms. Still, you
14 touched on this. And actually, no one has really
15 touched on it all day. You know, pretrial
16 diversion, community house arrest, programs in the
17 community, keeping people in a community rather
18 than going to prison. You said California cuts its
19 prison population in half with women. I take it
20 without much exposure to the public safety?

21 MS. STILL: That is correct.

22 COMMISSIONER KLADNEY: And I was
23 wondering, the money you saved by not sending half
24 of those people to prison, was California able to
25 beef up its local programming to keep women in the

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1 community?

2 MS. STILL: Yes. Yes, it has been,
3 significantly. There was an initiative. It was
4 called AB 109, and it was a proposition.
5 Basically, what the Governor and the Legislature
6 did is they incentivized the locals. They changed
7 the law to where you couldn't send a technical
8 violator back to state prison. And as we heard
9 earlier, women going back to state prison on
10 violations of parole, a lot of them were technical
11 violators.

12 In addition to that, lower-level
13 crimes, which women were predominantly incarcerated
14 for, they basically no longer could go to state
15 prison. They would spend their time in local jail
16 prison. So, they would remain locally, again,
17 where families closer to the support services, the
18 community in which they came from.

19 There was funding generated for that.
20 In my County, as an example, I get \$50 million a
21 year in my County to basically provide these
22 services and alternative programs.

23 They also created the legislation, the
24 Community Corrections Partnership Act, which I
25 chair as the Chief Probation Officer. The public

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1 defender, the district attorney, the court are
2 basically all part of this group. We also have our
3 Health Services Agency, and we have our public
4 defender and our Social Services Agency, all
5 involved.

6 And the whole thought behind it is, if
7 you create the programs in the community, one,
8 you're going to reduce the numbers going to state
9 prison. And they were facing court-ordered caps.
10 It wasn't like they did this because it was the
11 right thing necessarily to do. It was really
12 forced by the court. If they didn't reduce the
13 population, then, basically, they were going to get
14 court orders to release it.

15 But, anyway, that funding, then, our
16 community, which we are a very progressive
17 community, our board made a commitment that 50
18 percent of that money went into CBOs to provide
19 services for our reentry population. And for me
20 this year, I have oversight over \$24 million for
21 our local County.

22 And so, all of those things made a
23 difference, but it also depends upon which county
24 by geography. If you're in the Bay Area, in a very
25 progressive county, we have got services. We have

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1 got programs, and we care about keeping you home.
2 You're our resident, right? But if you're in the
3 Central Valley or if you're in parts of southern
4 California -- Susan, you can probably attest to
5 this -- it's a much different story. So, again,
6 going back to the lack of standards, it's all
7 driven by what the values of the community are.

8 COMMISSIONER KLADNEY: Thank you.

9 Ms. Burton?

10 MS. BURTON: Yes, I just want to add to
11 that. Northern California has been very
12 progressive and smart with their dollars from that
13 AB 109 program, where the legislators shift the
14 responsibility to local counties for the people who
15 were doing non-violent, not-serious, non-sexual
16 crimes.

17 But, now in southern California, our
18 county jails have went to where it's triple bunks,
19 and people can hardly walk through the areas in the
20 local jails. So, they have shifted it from the
21 prison to the local jail, where the people are
22 warehoused, and there's no programming hardly at
23 all.

24 COMMISSIONER KLADNEY: Nor is there any
25 place to hang out outside.

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1 MS. BURTON: No place to hang out,
2 bathrooms. I mean, there are real conditions over
3 there, but, you know --

4 COMMISSIONER KLADNEY: Professor, I
5 hate to put you on the spot like this, but Judge
6 Boulware in Las Vegas talked to us about
7 sentencing, federal crimes, and keeping women at
8 home. And I can't remember the statutory scheme --

9 MS. DIGNAM: He did.

10 COMMISSIONER KLADNEY: -- or anything
11 like that, but I know you can deliver.

12 MS. DIGNAM: This is in the Ninth
13 Circuit, where we were last April.

14 COMMISSIONER KLADNEY: Yes.

15 MS. DIGNAM: And it was a very specific
16 section of the U.S. Code, and he's a man on a
17 mission to educate defense attorneys that judges
18 actually have the power. And he has been doing it
19 to sentence.

20 I will get you the section of the Code
21 because -- I will get you the section of the Code,
22 but I don't remember it right now.

23 But, yes, he has a very firm
24 determination to limit that.

25 COMMISSIONER KLADNEY: And it has to do

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1 with U.S. Marshals --

2 Right.

3 COMMISSIONER KLADNEY: -- and all that.

4 MS. DIGNAM: Right. But I'll get it for
5 you, I promise.

6 COMMISSIONER KLADNEY: Thank you very
7 much.

8 Madam Chair, it's all yours.

9 CHAIR LHAMON: Madam Vice Chair?

10 VICE CHAIR TIMMONS-GOODSON: Thank you
11 very much, Madam Chair.

12 Professor Dignam, if you will, you've
13 told us that the level of education that those that
14 are incarcerated have certainly affects the
15 recidivism rate. And you highlighted the fact that
16 the Pell Grants at one point were available for
17 individuals in prison, and that was also my
18 understanding; and that, at its high point, more
19 than 300 colleges and universities were going into
20 the prison system and providing education. But,
21 then, we got tough on crime and someone argued that
22 it's a scam; folks are going out and committing
23 offenses to go to prison, so they can get a college
24 education.

25 (Laughter.)

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1 VICE CHAIR TIMMONS-GOODSON: You laugh,
2 but that's some of what was said.

3 But what I want you to address for us
4 is whether it's good policy, and, in fact, should
5 once again become the law, the availability of Pell
6 Grants or some kind of financial assistance for
7 those in prison. Talk to us about that. Perhaps
8 that might be a recommendation.

9 MS. DIGNAM: I would be happy to talk
10 to you about that. I had a longer section which I
11 took out, but I am happy to give back to you. I
12 actually looked at this and published an essay a
13 couple of years ago in the University of
14 Connecticut Law Review, because the statistics are
15 really overwhelming.

16 First, the background. It was 1994.
17 We were getting tough on crime. And you're right,
18 and anecdotally, people would say, "I can't justify
19 giving a college education to these women when my
20 staff can't educate their kids." So, that was part
21 of the tension, was that the price of an education
22 was going up.

23 When I was in Connecticut,
24 administrators used to refer to it as "Yale or
25 jail". So, the cost of a college education was

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1 about what it cost to incarcerate a person for a
2 year, the difference being that kids are typically
3 in college for four years, and people stay in
4 prison a lot longer.

5 And the statistics really are very
6 compelling about the recidivism rate. The more
7 education you get, as I highlighted earlier, the
8 lower it goes.

9 So, after it disappeared, there was
10 private reaction. People like Doris Buffett and
11 George Soros funded some efforts for college; now
12 does private things.

13 President Obama reopened the Pell
14 Grants with a pilot program a couple of years ago.
15 That was very promising.

16 I will say the FIRST STEP Act of
17 2018 -- and one of the byproducts of being invited
18 here was I got to at least look at it a little bit,
19 but it's very long -- it does include funding for
20 job and vocational programming, \$375 million.

21 At Columbia, we have a Center for
22 Justice that takes a lot of educational programs
23 into the prisons, and we're hoping to clone that
24 effort at different universities around the
25 country. And we're going to look at that provision

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1 and see. And it specifically, also, authorizes
2 groups from the outside to come in. So, I think
3 the notion is, this is going to come from outside.

4 There are very innovative programs like
5 the Inside-Out Program out of Philadelphia, where
6 professors from places like Columbia and James
7 Forman at Yale, take students from those
8 institutions and bring them into the prison and
9 teach a class with people on the inside and people
10 on the outside. And it's really quite profound.

11 Yale students have been going to Green
12 Haven since Attica to have a bimonthly conversation
13 with people inside, and many of them discuss it as
14 one of the most transformative experiences of their
15 college career.

16 VICE CHAIR TIMMONS-GOODSON: Ms.
17 Burton, you touched me when you said that it was
18 offensive for the term "offender" to be used, and
19 at the same time, one is reaching out and talking
20 about help. Please tell us what you would deem a
21 more appropriate way to refer to folks, because we
22 certainly would want to do that.

23 MS. BURTON: So, I'm a person. I'm
24 held as a prisoner or I'm formerly incarcerated,
25 but I'm not an offender. You know, I survived some

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1 stuff. You know, I'm a survivor, but I'm a person.
2 I'm an individual. I'm a woman. I'm a formerly
3 incarcerated. I have experience in the justice
4 system. I consumed some of their products.

5 But when I hear the word "offender" or
6 "those offenders," it just doesn't fit with here
7 I'm an offender, and then, I'm going to help you
8 with the trauma, or, you know, I'm a trauma-
9 informed offender, or what have you.

10 VICE CHAIR TIMMONS-GOODSON: Also, is
11 formerly incarcerated more acceptable?

12 MS. BURTON: Formerly incarcerated,
13 people being held, but not offenders.

14 VICE CHAIR TIMMONS-GOODSON: Thank you
15 for enlightening and educating all of us.

16 MS. BURTON: Thank you. Thank you for
17 asking.

18 CHAIR LHAMON: Commissioner Narasaki?

19 COMMISSIONER NARASAKI: I'm very
20 interested in sort of how you can use technology
21 these days to address two issues. One is the
22 education and training. So, with the technology we
23 have today, you don't actually need to send people.
24 And we've talked about how hard it is to get people
25 to really rural areas to provide those kinds of

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1 educational services.

2 So, is someone trying to develop suites
3 of things? Or are there particular challenges to
4 getting technology into the prisons that it would
5 be helpful to have someone create guidance about or
6 to say to foundations, "Hey, this is someplace that
7 you might be investing."?

8 Because we see on television all the
9 time these adult learning at home on the internet
10 systems. My alma mater provides learning, if you
11 want to, for alums, right? So, what is going on
12 there?

13 And then, the second thing is,
14 increasingly today you're not a person if you don't
15 have an ID. There's a story around D.C. where
16 churches are spending their own time and money
17 trying to help people who are homeless get IDs
18 because they either lose IDs or IDs get swept up
19 when their camps get deleted by the local
20 government periodically. And then, people who are
21 not from here have to try to figure out how to get
22 their birth certificate from somewhere else.

23 Is there someone in the government
24 trying to figure out are there some standards that
25 maybe prisons should be required to make sure you

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1 leave with an ID or something that would more
2 systematically address that problem?

3 Because, my experience, most of the
4 buildings in D.C. you can't enter if you don't have
5 an ID, much less do anything once you're there.
6 So, I'm just wondering if there's some system or
7 things that we could be recommending.

8 MS. STILL: I'll take a couple of
9 those. In California, the Governor and the
10 Legislature, they mandated CDCR to partner with
11 DMV, and to create the ability for individuals
12 returning home or returning residents to basically
13 get their ID before they're released. I won't say
14 that they're 100 percent, but they are so much
15 better than they were before.

16 There are educational learning networks
17 also. The education is there. It really is just a
18 matter of -- and it's been there for quite some
19 time -- to set up the internal networks and the
20 technology to allow it to be education on demand,
21 you know, from a variety of universities.

22 California has allowed colleges now to
23 come back into and have our individuals in prison
24 that participated in college programs, and it
25 changes the violence also. It reduces the overall

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1 conditions, because, if you have someone actively
2 involved in something positive and you're creating
3 a strength-based learning environment, basically,
4 that's going to start to break away or chip away at
5 that punishment culture within the institution.
6 So, that's another byproduct.

7 The other thing that some prisons are
8 doing -- certainly in California it's allowable
9 now -- is to have technology, to allow the inmates
10 to access. We actually have San Quentin the Last
11 Mile Coding Program, and they code and there's a
12 partnership with Google. Individuals that graduate
13 and are released from prison going home, then, go
14 to work for Google at this.

15 I have a youth detention center, a
16 juvenile hall, and basically we're bringing that
17 technology into. So that my youths in juvenile
18 hall, where really, historically, there was always
19 a concern that basically inmates in custody would
20 use the technology to reach out to victims or to do
21 illegal things, and, in fact, some of those things
22 have happened. But technology has come so far now,
23 there's all kinds of protections, you know,
24 firewalls that you can create. But that's,
25 historically, where the resistance has come from.

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1 MS. BURTON: California has a form that
2 waives the fee that government -- waives the fee
3 for an ID, that government entities and nonprofits
4 can use, and I can send that form to you, for you
5 to have a look at.

6 But the 30 percent of the people that
7 are talking about coming back into a new way of
8 life that do have IDs -- the other people have been
9 taken out of the system after that 10 years. And
10 so, it's they don't get their IDs and it's more
11 difficult to get their ID, to get the paperwork,
12 the birth certificates and all the documentation
13 needed for an ID, and then, onto the Social
14 Security card.

15 But the State Legislature did pass a
16 law that says CDCR should have people released with
17 IDs. They just -- I guess it's improvement,
18 progress, not perfection.

19 But I'll send that. I'll send that
20 form to you.

21 MS. NEY: That's also true in many
22 other states, I think coming out of the reentry
23 effort supported by the federal government over the
24 last 20 years, and there have been numerous
25 programs. There has been a big focus on this

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1 issue. But, as you've heard, it's not always an
2 easy thing to find a birth certificate, which may
3 be in a very different state than you are residing
4 at the moment, which you need to get an ID. And
5 unless there are folks who are willing to do that,
6 it takes a long time.

7 I was recently in South Dakota where
8 I'm working with a program to keep women out of
9 prison. Many of them, I should say all of them in
10 this program at the moment are Native American. A
11 woman has never had a driver's license in her life
12 is in her thirties. Staff took her to the
13 reservation, which was an hour's drive. They spent
14 a couple of hours there just trying to figure out
15 where her birth certificate was and what it
16 was -- where it was. They took her DMV. She got a
17 driver's license. That was almost a full day --

18 MS. BURTON: Yes.

19 MS. NEY: -- of time, of somebody's
20 time.

21 She was not able ever to navigate that
22 on her own, but that's what it takes to do that
23 kind of work.

24 MS. BURTON: That's what it takes.

25 MS. NEY: In regards to your technology

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1 question, I have seen more and more prisons
2 distributing tablets to the women, and that's a key
3 opportunity to do higher education and other kinds
4 of programming. It's certainly not in every
5 prison, but it is more, it is becoming more and
6 more the case.

7 I was recently in a very large prison
8 where all the staff and the women are on the same
9 internal email communication. So, every time an
10 announcement goes out, everybody in the facility
11 knows what's going on. They use that for
12 scheduling. They use it for all kinds of things.
13 So, I think it's coming along.

14 COMMISSIONER NARASAKI: Are there
15 programs or something that the federal government
16 could be recommending or pilots they could be
17 helping to fund or companies they could be
18 convening? Like what helpful role, if any, could
19 the government be playing?

20 JUDGE MURRAY: Well, this doesn't
21 directly answer your question, but I think the last
22 Attorney General, Mr. Sessions, fired the person
23 that Mr. Obama appointed as head of education in
24 the Bureau of Prisons.

25 COMMISSIONER NARASAKI: Oh, good to

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1 know.

2 JUDGE MURRAY: No, but to get back at
3 the state level, my experience is so much of it
4 depends on the warden and the director of
5 corrections. In Maryland, a few wardens ago, we
6 had a wonderful women who was willing to get
7 somebody to rewire because the buildings are real
8 old. So, they had to rewire the building. And
9 then, a group of us volunteers bought tables and
10 bought computers and bought printers.

11 We also started a college program.
12 It's since been taken over by Goucher College, but
13 volunteers started the college degree program at
14 the Maryland Correctional Institution for Women.

15 MS. BURTON: I'd like to mention a
16 program that, while I was touring with my book, I
17 went into the Arkansas Department of Corrections.
18 And there was a program that was being delivered by
19 the staff there called "Think Legacy". And I left
20 there feeling so moved and impressed by the
21 participants in this Think Legacy Program.

22 And I would say maybe you look into
23 that Think Legacy, with Nicole Smart and the
24 Arkansas Department of Corrections. It looked,
25 felt, and seemed as though she had created a

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1 program that was very, very forward, very
2 rehabilitative. And I don't know the exact words I
3 want to say, but the people were so responsive and
4 connected, more than in any prison I've ever been
5 in. And I think it was because of that Think
6 Legacy Program.

7 CHAIR LHAMON: Maybe I'd like to pick
8 up on that last set of points, if I could. You
9 described, Ms. Burton, your work as sort of filling
10 in need that the prisons don't in supporting
11 recovery, where you're working in the last couple
12 of decades. And I wonder if you could share with
13 us what are some features of success of that kind
14 of work that perhaps we could hope the prisons
15 could pick up before people have left.

16 MS. BURTON: You're talking about with
17 A New Way of Life?

18 CHAIR LHAMON: Yes.

19 MS. BURTON: Yes. So, we support
20 people to create self-identified goals. And then,
21 we support them to reach those goals. We have
22 upwards of 90 percent success with helping people
23 to reach their goals that they have set for
24 themselves, be it school, be it reunification, be
25 it jobs, whatever those goals are.

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1 The other thing that we do in A New Way
2 of Life is that we don't put a timeline on the
3 amount of time that people can stay with us. We
4 end up keeping on expanding and expanding, but we
5 have levels of housing from our initial reentry
6 homes, where they are fully staffed and people are
7 really engaged and supported, to like we drive them
8 to go get their IDs. We take them to go for
9 benefits. We teach them how to navigate the
10 systems.

11 And after they've learned that, then
12 they can go to independent housing. In independent
13 housing, the houses are maintained by the women who
14 that have come through the first two homes, and
15 they stay there until they can save up enough money
16 to move out independently.

17 But they're not on a timeline to say,
18 in 90 days, you've got to be through or 60 days you
19 have to be through. We know that reentry is very
20 individual and success is very individual. You
21 might have one woman who gets it all together in
22 five months. She gets out. She gets the job. She
23 saves her money and she's able to move out. You
24 might have someone who doesn't have a well-paying
25 job, doesn't have money management skills, and it

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1 takes a little more time to work with them. So,
2 they have the security and safety of knowing that
3 they don't have to be, they're not going to be
4 dropped off or the services stop at some point.

5 We have employment specialists. We
6 have a team of lawyers to help them reunite with
7 their children, to help them through employment
8 challenges, or different areas. Post-conviction
9 relief, the lawyers work with them and the broader
10 community.

11 And then, we also teach them leadership
12 development. We teach them how to go and speak
13 with our elected officials. We take them to
14 Sacramento. We take them to the Board of
15 Supervisors. They might come here with me and be a
16 part of this community, be a part of understanding
17 what this Commission does.

18 And so, we engage them in a way that
19 says that their voices are important, their
20 experiences are important, that they are important,
21 and that they are invested in and they are
22 supported to go on beyond what probably they ever
23 dreamed imaginable they would, than they ever
24 imagined was possible.

25 Like I'm here today, and I never

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1 imagined this was possible, but someone invested in
2 me. And so, I invest in someone else.

3 CHAIR LHAMON: Thank you.

4 MS. BURTON: Yes.

5 CHAIR LHAMON: Ms. Still, your written
6 statement recommends that custodial facilities
7 create a cultural environment where staff
8 understand how to effectively manage disciplinary
9 issues within a balanced system of support and
10 accountability. And I hope you could describe for
11 us what the features of such a system are.

12 MS. STILL: Yes. In terms of --

13 CHAIR LHAMON: Yes, I think your
14 microphone's maybe not on. Oh, now it is, yes.

15 MS. STILL: Is it on? Yes.

16 In terms of balanced system, it's
17 recognizing that -- and it was mentioned earlier
18 that there's a strength-based approach. So, you're
19 just not correcting behavior in a negative way;
20 that you're encouraging positive behavior with
21 incentives, and the incentives can be very small,
22 but they are very meaningful. That helps to change
23 the culture.

24 And then, also, in terms of the way
25 that disciplinaries are looked at. What's driving

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1 the disciplinary? Does the woman have a mental
2 health condition? Is there a trauma trigger that's
3 been triggered by whatever created the rule
4 violation? Those are all things, if you're
5 creating a strength-based system to address
6 disciplinaries, that you look at.

7 And then, also, the officers, the
8 reviewing officer, rules violation, we call them
9 hearing lieutenants in California; that they're
10 highly trained to look and to add value and weight
11 to all of those factors. And instead of in a
12 punishing way sending somebody off to solitary or
13 taking their visits away or doing other things,
14 that there is perhaps a resolution to it. Maybe
15 the woman participates in additional training or
16 mental health programming or a Beyond Violence type
17 of program that's going to actually correct
18 whatever the issue is versus just punishing and
19 taking things away.

20 CHAIR LHAMON: Professor Dignam, after
21 some decades doing this work, tell us, based on
22 pretty healthy progress up until now, what is a
23 basis for hope and what are the things that you
24 think would be necessary as second, third, and
25 fourth steps?

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1 MS. DIGNAM: This is the basis for
2 hope, is that we really have a very robust formerly
3 incarcerated community. I now live in New York
4 City, which has a really vibrant community. Los
5 Angeles has a really vibrant community. I cannot
6 overstate how important it is to have people who've
7 actually lived in these environments be part of the
8 change and lead the effort to get that change, be
9 able to articulate it, identify the priorities.
10 And they are a remarkable source of support, of
11 course, for each other.

12 There are two premier reentry
13 organizations in New York City, Fortune Society and
14 the Osborne Society. Almost everyone who works at
15 each institution has lived this experience, and
16 it's from the very granular, what Ms. Burton was
17 describing as when people come home, to physically
18 move them, move their boxes from one place to
19 another.

20 One of the wonderful parts of being
21 here is that I reached out to a number of women who
22 I've represented who are outside. And let me be
23 clear, reentry is rough. It is rough and it stays
24 rough, for many of the reasons that Ms. Burton has
25 said. And they understand that. They've

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1 experienced that. But they are remarkably
2 resilient.

3 The term "gender-responsive" has been
4 subject to some criticism, to the extent that it
5 implies that these women are weak or, because of
6 their history, they are excessively vulnerable.
7 They have needs, but they are amazingly strong and
8 amazingly resilient.

9 Some of the things that they have been
10 through, and then, some of the contributions that
11 they turn around and make are really, really
12 remarkable. So, that's what I would recommend, and
13 I think that's the hope.

14 CHAIR LHAMON: Thank you.

15 Any further questions from
16 my -- Commissioner Adegbile?

17 COMMISSIONER ADEGBILE: For whomever
18 wants to take this one, I've heard a lot of things
19 today that I think are shocking to people, even
20 though they're probably commonplace to the experts.
21 We've heard that people are sentenced to
22 incarceration because it's the best opportunity for
23 psychological care or drug treatment. We've heard
24 that, once incarcerated, people are sentenced to
25 solitary confinement, in part, because of their

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1 psychological condition and the prison is worried
2 that they may be a threat to themselves or somebody
3 else. And I guess we've heard, also, that
4 sometimes prison for some people seems like the
5 best opportunity to get an educational opportunity.

6 So, we've thought about, a lot about
7 what it looks like once you're in there. We've
8 thought about trying not to come back and what the
9 transition looks like.

10 But let me ask this question: what is
11 the best example of data, whether it's economic or
12 through some other metric, of how the investments
13 on the front end to create life chances that don't
14 lead to the path of involvement in the criminal
15 system would ameliorate a lot of these things that
16 we're talking about? Is there data? Are there
17 studies that show that front-end investments in
18 providing for the needs of our people is a better
19 approach than what we're talking about today?

20 MS. DIGNAM: There is some data. And
21 again, the decision by Judge Gleeson from the
22 Eastern District of New York that I cited in the
23 material collects a lot of those programs and a lot
24 of the data. So, there are now pilot programs,
25 both on the front end, pretrial diversionary

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1 programs, and on the back end in several Federal
2 District Courts. I think the last count was 16.

3 My students, for example, are now
4 participating in something for reentry for people,
5 subject to supervised release, where we go to court
6 every two weeks, and people come in and they talk
7 to a federal appellate judge about how they're
8 doing. And he problem-solves with them in real
9 time and refers to the many lawyers who are sitting
10 in the courtroom and says, "Well, they can maybe
11 help you negotiate your tickets."

12 I am very hopeful we can do some of
13 this. My law students are working very hard at it.
14 But they have similar programs on the front end.
15 They're in Philadelphia. They're in the Eastern
16 District of New York. They're in the District of
17 Connecticut.

18 This opinion pulls together a lot of
19 those resources, and I think is a good place for
20 you to start.

21 COMMISSIONER ADEGBILE: Thank you.

22 MS. NEY: I wasn't sure if you were
23 asking a question about prevention or alternatives
24 to incarceration.

25 COMMISSIONER ADEGBILE: I actually was

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1 starting back further on prevention, because we may
2 as well start it at the earliest point --

3 MS. NEY: Right.

4 COMMISSIONER ADEGBILE: -- to the
5 extent that some of these things that are
6 manifesting themselves --

7 MS. NEY: Sure, sure.

8 COMMISSIONER ADEGBILE: -- or grappling
9 with --

10 MS. NEY: It only makes sense. I'm not
11 aware of many studies that would comprehensively
12 say taking a prevention approach will keep people
13 out of prison. I think we see examples of people
14 who are raised in families of privilege who end up
15 in prison, and we see people who are in
16 impoverished communities who don't end up in
17 prison. There's some part of resiliency in that
18 that I think is a big contribution.

19 I think we have seen some programs, the
20 kind that you describe, which I would cast as
21 alternative to incarceration kinds of programs
22 which are very successful. We know from the
23 research that doing treatment in the community gets
24 a better recidivism result than doing treatment in
25 prison. So, I mean, we do have some research that

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1 points us in the right direction. We have lots of
2 good research about Head Start Programs. I mean,
3 again, in these areas of prevention, I think we
4 have great studies and research that tells us what
5 we need to do, if we are willing to do it. I would
6 put a Head Start Program on every block in every
7 city in this country; for example, if we were
8 interested in doing prevention in a way that would
9 take care of people, for example.

10 MS. STILL: Two of the programs that we
11 ran, alternative sentencing programs, were women
12 with children up to six years of age; could
13 basically live in a program in the community that
14 was specifically built and a lot of attention paid
15 to the environment, the physical plant. There was
16 not only a child care, but a Head Start Program
17 right onsite. And the recidivism rate for that
18 program was 12 percent as compared to over 60
19 percent, because these women had drug issues and
20 drug sentences.

21 And as California revised its drug
22 laws, the population that had access to those
23 programs basically disappeared. And so now, the
24 programs don't exist, and that type of program was
25 not created at the local level, at the county

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1 level. So, sometimes there are good intentions to
2 try and reform, like with some of the drug laws,
3 but, then, it takes these critical services that
4 the women need, and it really not only helped them,
5 but helped their children.

6 I'm putting my Chief Probation Officer
7 hat on for the juveniles. You know, truancy, it
8 starts with truancy. You can look back as soon as
9 second grade and you can see patterns exist. If we
10 invested and we basically provided support to the
11 families to keep the youth in school and, also, to
12 help the families through whatever their issue was,
13 and family counseling, some financial support,
14 wraparound services, it makes a tremendous
15 difference.

16 CHAIR LHAMON: Commissioner Narasaki?

17 COMMISSIONER NARASAKI: One of the
18 things that has struck me in the four years that
19 I've been on the Commission is how almost every
20 issue that we look into, there's always a huge
21 mental health component to it. And I'm wondering
22 if anyone has been doing research. Because we
23 heard some witnesses mention today even that the
24 police and the courts end up putting people in
25 prison rather than in mental health places where

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1 they can improve their mental health because they
2 don't exist.

3 And I've always thought that would be a
4 great place for the right and left to join forces
5 and all demand that this country actually face this
6 issue of mental health and what are we going to do
7 about it.

8 Is there anyone trying to measure that,
9 how many people are ending up in prison who really
10 should be in substance abuse or mental health
11 facilities instead?

12 MS. NEY: Most of them. Most of them.

13 COMMISSIONER NARASAKI: We have a lot
14 of testimony about how many women have mental
15 health issues. I'm just wondering if anyone has
16 added up the cost. If we did this instead of this,
17 would we have a better outcome and would we be
18 actually saving money and improving
19 everyone's -- improving the whole community?

20 MS. NEY: So, there's a big investment
21 going on to train all officers in crisis
22 intervention, for example. There are a number of
23 local communities that are establishing crisis
24 intervention programs for the express purpose of
25 not criminalizing mental health issues. Those

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1 programs are highly successful, as are specialty
2 courts that deal with mental health individuals.
3 So, it's a structured way of keeping them in case
4 management and on medication, should they need it,
5 and out of a prison system.

6 So, I'm not aware of any of those
7 programs that are failures. Most of them are
8 highly successful. But, again, it can be a
9 costly -- I can't say that community programs are
10 cheaper than prison programs. If you do them the
11 right way, they will probably be just as expensive,
12 but I think in the long run the benefits are
13 greater.

14 COMMISSIONER NARASAKI: Yes. I was
15 talking to some police friends of mine who -- a
16 former police chief who said that they worked on
17 these diversionary programs, they taught their
18 officers what to look for, but, then, the officers
19 had no place to actually take --

20 MS. NEY: Yes, and some hospitals will
21 not take them. They will take them for 24 hours.
22 They will medically certify them. They will
23 release them. So, yes, there are not very many
24 resources.

25 I just came back from a county jail, a

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1 county in the Midwest where there's literally not
2 one psychologist for juveniles in the entire
3 county, for any part of the population, period.
4 And that speaks to their ability to do anything.

5 MS. BURTON: The Corporation for
6 Supportive Housing has been doing some national
7 work that's diverting people from -- they call them
8 "high users" -- into permanent supportive housing
9 and scattered site housing, and out of mental
10 health, out of emergency services and jails. So,
11 The Corporation for Supportive Housing I believe
12 would have the data that you're looking for.

13 CHAIR LHAMON: With that, we are going
14 to close our panel just on time.

15 Thank you very much for a terrific
16 panel again today.

17 We will take a break, recess until 5:00
18 p.m., for the open public comment period.

19 All participants in the open public
20 comment period should report back at 4:45 p.m., and
21 we will see you then.

22 (Whereupon, the foregoing matter went
23 off the record at 3:59 p.m. and went back on the
24 record at 5:00 p.m.)

25

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OPEN PUBLIC COMMENT SESSION

CHAIR LHAMON: We will now proceed to our open public comment session. I'm going to give you a few opening instructions which I believe have been provided to each participant already.

Please tailor your remarks to the topic of today's briefing, the conditions of confinement for women in prison. Please state your name for the record.

Please note that the U.S. Commission on Civil Rights has a policy not to defame, degrade, or incriminate any person.

And given some of the topics that come up with regard to women in prison, I reiterate for public comment participants that, since 1983, Congress has prohibited the Commission from taking in any information or talking about abortion. Please tailor your remarks accordingly.

Also, this comment period is a time for the Commissioners to listen, not to engage in questions or discussion with presenters. We appreciate your testimony and are eager to hear it, and we will not take your short time with questions or dialog.

You will have three minutes to speak,

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1 which will be measured by this timer. And please
2 notice the box with the three lights. When the
3 light turns from green to yellow, that means one
4 minute remains. And when the light turns red, you
5 should conclude your statement. And if you do not
6 conclude, I will cut you off.

7 If you have not finished or would like
8 to submit additional comments, we encourage you to
9 do so by mailing or emailing your written
10 submissions to us at the addresses provided on your
11 information sheet, on Monday, March 25th, or by
12 Monday, March 25th, 2019.

13 While waiting for your turn, please sit
14 in the numbered chair that corresponds to your
15 ticket. And in order to reduce time between
16 speakers, we would ask that you move forward to the
17 microphones before the speaker in front of you has
18 finished.

19 Sign interpreters will be signing
20 during the presentations.

21 And if you have questions, please ask a
22 staff member.

23 Some of our Commissioners do have
24 flights to catch. And so, if somebody has to step
25 up to leave, it is not a comment on your comment,

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1 and we apologize for the interruption.

2 So, with that, I open for our first
3 public comment presenter.

4 MS. FOX-RICHARDSON: Me. Good evening,
5 Commissioners. I can't begin to tell you how
6 honored I am to be here with you today. Thank you
7 for your time and consideration.

8 My name is Sybil Fox-Richardson. My
9 friends calls me Fox-Rich. And I bring you
10 greetings from the best city in the world, New
11 Orleans, where I work with our State of Louisiana,
12 along with other stakeholders, such as Louisianans
13 for Prison Alternatives, Southern Poverty Law
14 Center, and VOTE, Voice of the Experience, as well
15 as the National Council of Incarcerated and
16 Formerly Incarcerated Women, to bring about
17 criminal justice reform in our State. And we are
18 currently leading the nation in our efforts with
19 the legislation we just passed in 2017. But,
20 needless to say, we have a very long way to go.

21 My comment to you today would be to say
22 that the first thing that we must do is determine
23 that a thing must be done. And when we determine
24 that something must be done, then we shall find the
25 way. We must end the incarceration of women and

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1 girls in the United States of America. We must.

2 Once we come to that understanding,
3 then we shall find the way. It's kind of like
4 paying an electric bill. Once you know that it
5 needs to be paid, you scrape up the money and get
6 it done.

7 For me, I am the mother of six sons, a
8 formerly incarcerated woman, and the matriarch of
9 my family, who has served 21 years and four days in
10 Louisiana's criminal justice system.

11 One of the things that I can say to you
12 is, in my time in prison, I had never met someone
13 that could not read or write until I got to prison,
14 and that's where I found them. So, education is
15 definitely a key component in our system that we
16 have to address.

17 But the primary thing that I want to
18 discuss with you is about a bill that we are moving
19 through the National Council across the country,
20 and that is the Primary Caretakers Bill. We have
21 got to make sure that when women have children that
22 are under the age of 18 years old, that by any
23 means necessary we keep that mother with that
24 family. To take a man out of the family
25 destabilizes a family. But in Louisiana, where the

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1 majority of people in our system are people of
2 color, when you remove a women of color from a
3 family, you disseminate the family.

4 I had four children when I was
5 sentenced to seven years in prison. I left them
6 with my mother, fortunately, who was able to
7 provide care for them. My husband had been
8 sentenced to 60 years as a first offender in a
9 crime that nobody received medical treatment in,
10 and they wanted to give me 40 years in prison.

11 So, I've been home from prison now for
12 17 years, recently reunited my family. My husband
13 came home through clemency. And we were able to
14 maintain our family, which is not the case for most
15 people. We have to make sure that we keep the
16 women with their children.

17 In slavery in Louisiana, in 1832 to
18 1865, when a woman incarcerated had a child, it
19 stayed in prison with the mother until it was 10
20 years old. Are we not more humane?

21 CHAIR LHAMON: Thank you very much.

22 To our next speaker.

23 MS. BENEDICT: Hello. My name is
24 Alyssa Benedict, Executive Director of Core
25 Associates.

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1 My testimony is a call to action to
2 eliminate harmful disciplinary practices in women's
3 prisons and promote the development and
4 implementation of new systems that align with the
5 research on women we've heard about today.

6 Disciplinary practices in women's
7 prisons are violating basic psychological
8 principles and they're antithetical to criminal
9 justice goals. They're placing unnecessary
10 financial burdens on departmental and state
11 budgets, increasing the length of women's
12 incarceration, and contributing to adverse
13 outcomes. We must name and elevate this problem,
14 amplify the voices in women, and take collective
15 action immediately.

16 While ineffective for all human beings,
17 discipline approaches in prison have unique and
18 disproportionate impacts on women, most of whom are
19 survivors of trauma and the primary caregivers of
20 dependent children. They restrict contact with
21 family and key relational supports, trigger trauma,
22 and sever women from stabilizing relationships and
23 connections. The disciplinary sanctions that women
24 receive in the name of justice deepen their wounds
25 and create new scars that they bring with them into

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1 their communities upon release.

2 I began to advocate for a discipline
3 reform in women's prisons many years ago. As a
4 federal partner for the National Research Center on
5 Justice Involved Women, I authored the nation's
6 first discipline policy guide with the help of
7 Becki Ney and Andie Moss. As co-founder of the
8 Women's Justice Institute, I have helped cultivate
9 some of the nation's most powerful, quantifiable
10 evidence on disciplinary injustice.

11 In fact, our groundbreaking work and
12 research, including our implementation of the
13 nation's most comprehensive women's prison
14 assessment, spurred and substantively shaped a 15-
15 state investigation by The Chicago Reporter, NPR,
16 and the Medill School of Journalism that was
17 published in 2018. You heard about that today.

18 The Women's Justice Institute's
19 cutting-edge research has revealed the following
20 important realities:

21 Women are disciplined at higher rates
22 than men and receive harsher penalties, often for
23 non-violent infractions.

24 Women of color and those who identify
25 as LGBTQ suffer unique injustices within the

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1 system.

2 They're uniquely problematic for
3 women's suffering with mental health challenges,
4 including PTSD. In fact, these practices worsen
5 mental health challenges and create ones that
6 didn't exist before incarceration.

7 They're increasing women's length of
8 imprisonment and taxpayer costs.

9 They include mandatory sentences for
10 repeated infractions that encourage things like
11 stacking of charges and discipline, which has
12 serious impacts on women's earned good time, limits
13 their access to programs, limits visits with
14 children, and prevents them from having early
15 release parole opportunities.

16 They're fortified by grievance
17 processes or staff intimidation. Retaliation and
18 coercion prevent women from accessing their rights
19 as human beings.

20 When women speak about their
21 experiences, they're often not believed and engage
22 in survival behaviors for which they're punished.

23 In the matrix of criminal justice
24 system reform, disciplinary practice in the women's
25 prisons around this country represent a human

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1 rights crisis.

2 This testimony is a call to action that
3 includes five steps: each state should assemble a
4 team to explore disciplinary trends in women's
5 facilities; develop a plan to provide staff with
6 immediate training and coaching; actively engage
7 directly impacted women.

8 CHAIR LHAMON: Thank you very much.
9 We'll need to take the rest.

10 MS. BENEDICT: Thank you.

11 CHAIR LHAMON: Thank you.

12 Next speaker.

13 MS. SEVCENKO: My name is Catherine
14 Sevchenko, and I am the counsel for the National
15 Council for Incarcerated and Formerly Incarcerated
16 Women and Girls.

17 The National Council is the only
18 national organization that was founded and is run
19 by incarcerated and formerly incarcerated women and
20 girls. You may remember us as the voice of the
21 women in prisons who drafted part of the Dignity
22 Act, which has been mentioned many times today.
23 Our goal is unabashedly to end the incarceration of
24 women and girls, but, in the meantime, we also work
25 to address the conditions of confinement for those

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1 who are currently incarcerated.

2 We would like to ask for you to
3 continue your critical oversight and engagement
4 with this issue, but we also invite you to go
5 beyond re-imagining prisons and ask you to re-
6 imagine the criminal justice system itself. Please
7 explore innovations, such as bail funds,
8 participatory defense, and statutes that keep
9 primary caregivers out of prison and at home with
10 their children.

11 If they were here, the members of the
12 National Council would speak about the difference
13 between what prison officials say and how the
14 system really works. As Ms. Burton did, they would
15 tell you how all the problems that we have learned
16 about today affect the lives of women, their
17 children, and their families. The recent scathing
18 report of the Department of Justice OIG on the
19 conditions of incarcerated women confirms the lived
20 experience of National Council members.

21 We are grateful for your work and, in
22 particular, for the care that you have used in the
23 language that you have used today, so as not to re-
24 traumatize women who have experienced
25 incarceration.

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1 But any reform is useless if it is not
2 implemented well. And the FIRST STEP Act is the
3 latest example. The BOP claims it is implementing
4 the law, but the view from the prison bunk is very
5 different. And I would like to share with you now
6 some actual responses from a survey we have
7 received from women across the country who are
8 inside.

9 "The prison is not helpful with any
10 information about the FIRST STEP Act. They aren't
11 correctly applying credits, nor communicating with
12 us about when or how it will affect any of our
13 sentences. They seem to act as if it is not
14 official or real at this time. Whenever we ask the
15 warden or any high administrator about the FSA,
16 they either don't know or they've never heard of
17 it, or they say, 'It doesn't apply to you.'"

18 So, we urge you to continue educating
19 the public about the disastrous condition in
20 American prisons and to make sure that the promises
21 to the incarcerated are kept.

22 CHAIR LHAMON: Thank you.

23 MS. SEVCENKO: Thank you, and free her.

24 CHAIR LHAMON: Thank you.

25

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1 MS. CHEEMA: Puneet Cheema, on behalf
2 of Lambda Legal, the nation's oldest and largest
3 legal organization dedicated to the rights of LGBT
4 people and those living with HIV. We've
5 represented incarcerated transgender women in
6 leading impact cases affirming their rights.

7 Our comments today cover three areas of
8 concern for transgender women in prison: housing
9 placement, protection from sexual assaults, and
10 access to necessary medical care.

11 First, transgender women are too often
12 housed in men's facilities. But it requires
13 facilities to give serious consideration to
14 transwomen's views if they wish to be housed
15 consistently with their gender identity. However,
16 many facilities completely disregard this and place
17 them in men's facilities based on their sex
18 assigned at birth. This subjects them to intense
19 sexual harassment and risks of sexual assault.

20 Just such a case in North Carolina made
21 the news today. Ms. Kanautica Zayre-Brown has
22 surgically transitioned, but has been placed in
23 men's dorm and subjected to daily harassment,
24 according to news reports, despite repeatedly
25 requesting to be housed in a women's facility.

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1 To mitigate the risk of violence
2 against transgender women in men's facilities, many
3 facilities, then, place them in protective custody,
4 effectively long-term solitary confinement. In
5 addition to negatively affecting their mental
6 health, it makes it difficult for transwomen to
7 access education, training, recreation, employment,
8 and other services that result in good time credit,
9 ultimately causing them to serve more time in
10 custody. Transwomen should be afforded the option
11 to be housed according to their gender identity or
12 wherever they feel and are safest.

13 Second, more must be done to protect
14 transwomen from sexual violence. The rates of
15 sexual assault against incarcerated transwomen by
16 both other inmates as well as staff are horrific.
17 A 2009 survey of California prisons estimated that
18 trans-people are 13 times more likely to be
19 sexually assaulted. The Bureau of Justice
20 statistics puts this rate at 10 times more likely.

21 Passion Star, a Lambda legal client,
22 was housed in six male facilities in Texas, where
23 she was identified as feminine, raped, and forced
24 to submit to undesired sexual acts to escape
25 violence. She filed dozens of grievances,

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1 complaints, and requests to be placed in
2 safekeeping. But, instead of taking measures to
3 protect her, officials told her to fight or stop
4 acting gay if she did not want to be assaulted.
5 Eventually, after years of litigation and advocacy
6 by Lambda Legal on behalf of Ms. Star, she was
7 released on parole.

8 More must be done by facilities to
9 prevent sexual violence against transwomen, to
10 thoroughly investigate it when it occurs, provide
11 medical service to survivors, and hold perpetrators
12 accountable.

13 Finally, incarcerated transwomen must
14 be provided necessary access to medical care, as
15 required by the Eighth Amendment. While courts,
16 the medical community, and most correctional
17 facilities now recognize gender dysphoria as a
18 serious medical condition, facilities continue to
19 limit the type of medical care that is available to
20 transwomen and remain unwilling to provide
21 transition-related surgeries when they are
22 medically necessary.

23 Facilities also deny transwomen access
24 to gender-appropriate clothing and personal items,
25 refusing them the ability to groom themselves in a

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1 manner consistent with their gender identity. This
2 can lead to daily humiliation and exacerbate gender
3 dysphoria, harming their health. And they also
4 expose facilities to liability when these items are
5 medically necessary to treat gender dysphoria.

6 State prisons and jails must do more to
7 ensure they are not violating transwomen's rights
8 and endangering them through inappropriate housing
9 decisions, by --

10 CHAIR LHAMON: Thank you.

11 MS. CHEEMA: -- failing to protect them
12 from sexual assault --

13 CHAIR LHAMON: Thank you.

14 MS. CHEEMA: -- and limiting their
15 access to medical care.

16 CHAIR LHAMON: We very much appreciate
17 this public testimony.

18 We understand that there is one other
19 person who is traveling. So, the Commission is
20 going to recess and we will stay here until 6:00.
21 And if the person gets here, we'll take that
22 testimony as well.

23 Thanks very much.

24 (Whereupon, the above-entitled matter
25 went off the record at 5:14 p.m. and resumed at

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1 5:59 p.m.)

2 CHAIR LHAMON: So, we're returning from
3 recess.

4 Thank you for your extraordinary
5 efforts to come for public comment. I'll just
6 share the instructions for public comment.

7 Given some of the topics that can come
8 up with regard to women in prison, I reiterate for
9 public comment purposes that, since 1983, Congress
10 has prohibited the Commission from taking in any
11 information about or talking about abortions. So,
12 please tailor your remarks accordingly. And if
13 necessary, I will enforce that statutory
14 restriction.

15 This comment period is a time for the
16 Commissioners to listen, not to engage in questions
17 or discussion with presenters. We appreciate your
18 testimony and are honored and eager to hear it, and
19 we will not take your short time with questions or
20 with dialog.

21 You'll have three minutes to speak,
22 which will be measured by a timer. And please
23 notice this box with three lights here. When the
24 light turns from green to yellow, that means one
25 minute remains. When the light turns red, you

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1 should conclude your statement, and otherwise, I
2 will need to cut you off.

3 So, we look forward to your testimony.
4 Please proceed.

5 MS. PRICE: Good evening. Thank you so
6 much for waiting for me. They don't call me
7 "Grace" for nothing. Thank you so much.

8 I am Kelly Grace Price from the Close
9 Rosies organization. We're a group of survivors of
10 the Rose M. Singer Center, the all-female jail on
11 the notorious Rikers Island jail complex in New
12 York City. I thank you for holding this hearing and
13 for allowing me to appear in front of you.

14 I want to address my comments
15 specifically to PREA, the Prison Rape Elimination
16 Act, in New York City jails. I know that this
17 particular hearing is engaged around women and
18 girls in prisons, but, of course, you can't get to
19 prison in this country until you are in jail first.
20 And I specifically have one ask of the Commission,
21 and I'll get to that.

22 I ended up on Rikers Island as a
23 survivor of domestic violence. My batterer was
24 connected to the NYPD, and the Manhattan District
25 Attorney used him as a confidential informant to

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1 sweep through upper Manhattan and make all kinds of
2 big RICO gang busts. You may or may not be
3 familiar with the person who has the title of
4 Manhattan District Attorney, Cyrus Vance. He is
5 one of the main leaders in the national anti-gun
6 movement.

7 So, a lot of people like me end up on
8 Rikers Island. A lot of innocent people end up on
9 Rikers Island because, as women, we're caught
10 between the Scylla and Charybdis of circumstances
11 that take us there, even though we absolutely are
12 not guilty of the crimes committed. In fact, you
13 should know that the people that end up on the Rose
14 M. Singer Center on Rikers Island, the women and
15 girls, only 28 percent of us eventually take a
16 guilty plea or plea bargain out. So, basically,
17 that means less than 30 percent of us are actually
18 guilty in the first place. This is not a place
19 where rape and sexual assault should run amok. We
20 should not be re-persecuted as innocents when we're
21 put in this jail.

22 For the past seven years, I have been
23 advocating to implement PREA in our city jails,
24 specifically on Rikers. And our oversight board,
25 the Board of Correction that is predominantly

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1 appointed by our Mayor, has failed miserably to
2 implement PREA.

3 After much community to and fro, in the
4 summer of 2016 a PREA rule was proffered forward.
5 It was voted on to much dissent in November of
6 2016, to be implemented beginning in January of
7 2017. To date, of the over 100 different aspects,
8 the fachay of different rules to be implemented,
9 cameras, reporting, investigations, staffing, less
10 than 10 percent of them have been implemented.
11 There's absolutely no oversight.

12 And I know that the Commission has the
13 power to convene hearings, to subpoena leaders.
14 And I'll provide much greater at length written
15 testimony, but I ask this Commission to start with
16 New York City. This is the place where NOW was
17 born. This is the place where my grandmother ate
18 pizza on the steps of City Hall as a suffragette.
19 We need to protect our most vulnerable citizens,
20 especially if we're innocent.

21 Thank you for listening to me. Thank
22 you for having me.

23 CHAIR LHAMON: Thank you. Thanks.

24 And with that, we are closing this, the
25 record, for the day. Thank you very much.

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1 (Whereupon, at 6:04 p.m., the above-
2 entitled matter was adjourned.)
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