U.S. COMMISSION ON CIVIL RIGHTS

EDITED

PUBLIC BRIEFING

WOMEN IN PRISONS: SEEKING JUSTICE BEHIND BARS

FRIDAY, FEBRUARY 22, 2019

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

PRESENT:

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DEBO P. ADEGBILE, Commissioner
GAIL HERIOT, Commissioner
PETER N. KIRSANOW, Commissioner
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SUSAN BURTON, Founder, A New Way of Life Reentry Project

BRET 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

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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

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

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COMMISSIONER ASSISTANTS PRESENT:
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ALEC DUELL
JASON LAGRIA
CARISSA MULDER
AMY ROYCE
RUKKU SINGLA
ALISON SOMIN
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PROCEDINGS

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

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

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

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

Testimony from this briefing will form an integral basis for the Commission's eventual report to the President, Congress and the American
people, in which we will offer recommendations regarding adequate safeguards for the civil rights of incarcerated women.

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

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

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

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

Your views help us to fulfil our mission to be the nation's eyes and ears on civil
rights. And I will now turn to Commissioner Dave Kladney who leads this investigation for the Commission.

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

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

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

Today's briefing contextualizes many of the issues facing women in prison in one place. I hope this consolidation of issues will lead to change in an archaic system of imprisonment which succeeds in punishment but fails in the ability of
any meaningful rehabilitation which increases the public safety.

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

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

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

Doing time is difficult enough. It is acknowledged by prison professionals that women are traumatized to a much greater degree than men when
entering prison. They should not be further
traumatized, degraded, disciplined or assaulted
because of their gender.

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

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

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

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

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

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

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

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

Total spots at the public comment period are allotted on a first-come, first-served
basis. If you did not already sign up for one of the first 15 spots online, you may sign up at the registration desk now.

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

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

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

And unless you are the one person who
did not submit your testimony until today, you may assume we have read your statement so you do not need to use your time to read them to us as your opening remarks and please focus your remarks on the topic of our briefing.

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

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

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

Panelists, please notice the system of
warning lights that we have set up. When the light
turns from green to yellow, that means two minutes
remain for your speaking time.

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

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

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

The order in which they will speak is
Dr. Alix McLearen, National Administrator of Women
and Special Population Branch, Federal Bureau of
Prisons, Kaitlin Owens, Policy Analyst at the
American Conservative Union, Dr. Emily J.
Salisbury, Associate Professor of Criminal Justice,
University of Nevada, Las Vegas. I understand you
traveled late last night, thank you for showing up
early this morning, West Coast time.
Emily Mooney, Criminal Justice Policy
Associate R Street Institute, and Pamela Winn,
Founder and Executive Director of Restore HER.

Dr. McLearen, please begin.

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

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

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

I wish to make two key points, that
because women and men are not the same, they require varied services, and that the Bureau has a number of gender-responsive practices that should be considered for replication.

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

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

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

Women have higher rates of victimization and co-occurring psychiatric disorders but lesser criminal histories. Relational issues are critical. These differences matter because to provide the best rehabilitative or even just habilitative services to women in
prison, we have to understand how they got there.

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

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

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

But we know that programs made for
women or those that are gender-neutral yield positive outcomes. Similarly, we know that women-centered management approaches engender better responses and we can do these things without taking anything away from men.

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

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

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

I'll use the remainder of my time to talk about how we move forward with actionable items that make the best use of resource and
expertise. With regards to family disruption, women's roles as mothers and caretakers are well documented.

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

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

We cannot address only the mothers who fit our conception of what a mother should be. We have to address them all.
I always have beds available in my programs for pregnant women so at least in the federal system, access or capacity is not the problem. Let's try to learn what's so broken that some women have no interest in these services.

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

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

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

So while we can learn from the past, we cannot use past issues as representations of what
is going on today. Those are indicators of progress. For example, the Bureau restricts the use of restraints on pregnant inmates and enhanced availability of free feminine hygiene products.

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

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

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

We survey women in Bureau custody. Responding women reported greater access to self-improvement programs in prison than on the outside. And last, we need more evidence-based programs for women to ensure their needs and rights are addressed and protected.
We need to evaluate our current programs, we need basic research telling us more about subsections of the female population, we need more vocational options in non-traditional fields.

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

CHAIR LHAMON: Thank you, Dr. McLearen. Ms. Owens?

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

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

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

It's not just the inmate that gets punished, communities diminish, families suffer and
taxpayers are burdened. The truth is that 95 percent of inmates will eventually return into society so it's our job to make sure that the prisons and jails are well equipped to rehabilitate and correct, and not solely just punish.

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

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

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

The Adoption and Safe Families Act requires termination of parental rights after a child spends 15 to 22 months in foster care, effectively guaranteeing the loss of their children.
The mother's prison term is 19 to 20 months so they are almost guaranteed to lose their children. Access to visits and calls with loved ones help maintain a healthy mental state while behind bars, and those who received visitors are 13 percent less likely to recidivate.

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

No pregnant inmate should be shackled without evidence that she is likely to harm herself, others or her baby. Shackling a pregnant woman carries the risk of injury, both to her and her unborn baby because it restricts maternal and fetal movement. There has been absolutely
no documentation or attempts of where a pregnant
inmate tries to jump off her gurney while in labor.
After childbirth, mothers are separated from their
newborn babies which strips them away from this
crucial bonding period. This negative
effect on the child's development as well as the
emotional state of the mother is crucial. Research
has also found that most correctional facilities
fail to provide physician-recommended standards of
care for pregnant women.

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

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

In 2017, the DOJ mandated that feminine
hygiene products were to be given to inmates at no
cost, yet we see that many inmates continue to
receive an inadequate number of supplies. For
instance, Kimberly Haven, she received toxic shock
syndrome from a homemade tampon during a 15-month sentence in Maryland and she had to have an emergency hysterectomy to save her life. This should not be the case.

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

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

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

An astonishing 98 percent of incarcerated women have experienced some sort of physical, sexual or emotional abuse in their lives. Situations that subject women to the power of correctional officers including showers, using the
restrooms, strip searches can trigger traumatic memories for women who have survived this abuse.

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

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

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

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

So, on that, on behalf of the American
Conservative Union, we strive to educate people on ways to reform the criminal justice system at both the state and federal levels. We support reforms based on conservative principles.

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

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

CHAIR LHAMON: Thank you, Ms. Owens.

Dr. Salisbury?

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

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

I'll leave it to other panel experts to discuss in greater detail the many other critical issues that harm women in prison and that are in
It's been nearly 20 years since the National Institute of Corrections, which is a division of the U.S. Bureau of Prisons, discovered that the vast majority of state departments of corrections and the Federal Bureau of Prisons primarily use custody and needs classification assessments based on incarcerated men for determining incarcerated women's custody levels and programming needs.

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

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

Nearly 50 years, five-zero, of qualitative and quantitative research from scholars in the fields of criminology, law, social work, women's studies, medicine, public health,
psychology, psychiatry and sociology tell us that women are, sure enough, different and in need of different, distinct needs. This has also been demonstrated from my scholarship. One of the major solutions of our NIC-funded research was the development and validation of a series of risk and needs assessments specifically designed by and for justice-involved women.

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

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

After all, a division of the BOP funded
the research. And while staff in the Women and Special Population Branch at BOP who are sitting here today have genuinely tried to do their best with the custody classification system that they have to use, any instrument that does not include the gender-responsive needs that statistically predict women's struggles will never be accurate and valid.

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

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

This means that they over-predict women's likelihood of engaging in misconducts in prison and recidivism in the community. This over
prediction causes prisons to keep women in more severe prison conditions and to put more restrictions on them than is warranted by their behavior compared to men.

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

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

Women who suffered from child abuse, who showed symptoms of depression or anxiety, who were angry, who had symptoms of psychosis, who had histories of substance abuse, or who were engaged in unhealthy dysfunctional intimate relationships were more likely to incur serious misconduct violations within one year of incarceration compared to women who didn't display such characteristics.
As a result, prisons should be doing more to focus on these needs that are specific to women's gendered experiences because they are literally driving the problematic behavior that staff are concerned about within prisons and in the community upon release.

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

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

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

Finally, despite the smaller numbers of women in prison, we must not forget that every single policy, practice and procedure that we put
in place that was designed for men and then applied
to women affects every single woman 100 percent of
the time, not 7 percent, not 8 percent, or whatever
the incarceration rate of females is in any given
correctional system.

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

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

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

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

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

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

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

Therefore, it is of the utmost importance that we as a society ensure that the
aims of such interventions are being accomplished and that our fundamental values remain respected.

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

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

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

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

In contrast, over the same time period,
the number of male’s prisoners under state and federal jurisdiction grew by roughly 190 percent. As the number of women in prison has increased, so has the importance of assessing their unique pathways to crime and barriers to re-entry.

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

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

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

Further, correctional staff and state facilities still often fail to receive the trauma-informed and gender-responsive training necessary to equip them to interact with a different
population. Finally, the behavioral, mental and physical health services needed to support imprisoned women are also lacking, as will be expanded upon by future panelists today.

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

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

This means that children of incarcerated mothers are often separated from the person upon whom they depend most. Whereas incarcerated fathers may rely on their child's mother to provide their child's care during their absence, incarcerated mothers turn to extended family, grandparents and sometimes the foster care system.
The resulting familial disruption brings with it a host of negative externalities. Children practically present a new financial and emotional burden for caretakers, and research shows that children who have incarcerated mothers are at a higher risk for not forming healthy child attachments, a cornerstone in positive child development.

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

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

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

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

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

As noted by Kaitlin, the Adoption and Safe Families Act also puts parental rights at risk of being terminated. Thus, women with longer prison sentences or those who fail to re-enter society successfully and are quickly reincarcerated are at greater risk of having their parental rights terminated.
In some cases, this may not be in the child's best long-term interest and in others it may be, but may simply put further strain on social services agencies.

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

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

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

Jurisdictions should first assess the current needs of women in prison as well as the services available to meet them, and both correctional officers and correctional administrations who craft policy should be properly
equipped to interact and make policy for women.

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

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

Thank you for your time.

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

MS. WINN: Good morning. I sincerely appreciate your empathy into looking at the conditions of incarcerated women. My name is Pamela Winn. I am the founder for Restore HER, which is a nonprofit organization that advocates for incarcerated women. I am also an RN and I am also a formerly incarcerated woman. I
served a 78-month federal sentence and today I speak on behalf of the invisible women, and I call them the invisible women because we are the women that are not included in the criminal justice reform conversations.

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

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

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

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

So now we're talking about seven weeks
later, I go to the ER and it's no longer an emergency and I'm turned away. We have to do another request, another four-week turnaround period, to get me to the obstetrician.

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

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

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

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

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

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

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

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

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

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

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

We have created this problem and it was created by government entities, mandatory minimums, lawmakers, the War on Drugs, and then it was perpetuated by the American society that continues
to practice racism, classism, sexism and these things which devalue women that are incarcerated.

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

Thank you.

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

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

MS. WINN: I get this question often. People ask me, how did I maintain. My answer to that is I would start my day by thinking about my two sons, imagining what their day was like, what they may have been doing at that time, remembering fond memories of being with them.
And then when I would exhaust those thoughts, I would think of plans when I return home of things that I wanted to do. And when I would exhaust those thoughts, I would picture places I wanted to be and what I would want to be doing instead of being where I was.

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

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

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

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

So if you have a shower that day you would need to shower, if you wanted to go outside
you could go outside but you can only see up
because everything around you is closed off by
cement.

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

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

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

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

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

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

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

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

DR. McLEAREN: Yes.

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

DR. McLEAREN: Absolutely, and thank
you. So, the Bureau of Prisons has obviously been a correctional agency for quite a long time and some kind of a position working on female issues has also existed for a long time.

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

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

So I would say that's the first step of progress. Additionally, it was just me when that branch started and we've increased the staffing significantly. We quickly implemented a comprehensive policy, the Female Offender Manual, that prescribes what kind of programs we need to do that are gender-responsive at all of our facilities, some different ways to manage women, addresses gender-responsive discipline and why that's important.
We implemented a large menu, I referenced, of programs that were specific to women. So in 2014, we did have a trauma treatment program. We expanded that across our female sites and we've added more than 15 other programs, a dual diagnosis, a women-specific residential drug abuse treatment program.

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

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

And last, I think I’d like to talk about, which this was in my written statement, our female integrated treatment program, which is really a flagship program that we've put in at the
low-security female facility in Danbury.

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

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

COMMISSIONER KLADNEY: Thank you.

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

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

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

My question is, has your staff, has
your division increased beyond four people? And has the executive staff taken the training?

    DR. McLEAREN: Thank you.

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

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

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

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

    Thank you.

    CHAIR LHAMON: Other questions?

Commissioner Kirsanow?

    COMMISSIONER KIRSANOW: Thank you,
Madam Chair, and thanks to all of the witnesses.

Just a couple of numerical questions. I think, Ms. Mooney, you indicated, and maybe I got this wrong, there was 23,000 inmates in 1985 and there's now 110,000, is that correct?

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

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

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

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

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

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

MS. OWENS: At the 28 federal women's
prisons?

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

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

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

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

Our female federal population is about 12,000 individuals. Some of the facilities are as larger as about 1,000 people and some of them, particularly the lower security, what we call a
camp or a minimum, are smaller and so may have just a few hundred individuals at that location.

COMMISSIONER KIRSANOW: Great. Thank you very much.

DR. McLEAREN: Thank you.

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

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

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

And something I didn't mention but I think is interesting is we've also seen different trends in states when states have implemented criminal justice reform, that sometimes the male
population starts to decrease but the female
temperature either stagnates or increases.

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

COMMISSIONER KIRSANOW: Thank you.

CHAIR LHAMON: Commissioner Narasaki?

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

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

So, are there any plans, strategies, is
there plans to build more, to contract, to have
alternative facilities in order to make it more
possible for women to be closer to their families
so that when they do get out, there will be more
positive outcomes?
DR. McLEAREN: I'll go ahead and go first and then maybe if some of you want to speak to the state or local issues that would be helpful.

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

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

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

The last thing I want to point out is that part of our process towards re-entry is the
residential re-entry center, or what you might think of as a halfway house.

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

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

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

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

Which if you don't have a car, which I would assume many women, because they're coming in
from impoverished circumstances, are not going to be able to get their kids there.

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

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

MS. MOONEY: Many steps.

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

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

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

So that means that we are going to
continue to ignore the gender-responsive and trauma-informed needs of justice-involved women and women prisoners in the federal system.

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

COMMISSIONER NARASAKI: Sure, Ms. Winn?

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

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

We would also provide a standardization of care and best practices nationwide, and we would hire adequate medical staffing, knowledgeable
medical staffing and do training, gender-specific
and sensitized training, for guards.

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

MS. WINN: Yes, ma'am.

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

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

MS. WINN: The facility that I was at,
like I said, they blatantly told me that they were
not able to do anything for me. They told me that
they didn't expect to have women there, they
definitely did not expect to have a pregnant woman there.

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

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

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

COMMISSIONER NARASAKI: Thank you.

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

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

I would hope we don’t build more
prisons, I hope we close prisons to be honest, but
60 percent of women are in prison because of
substance abuse. That's a lot, and as I said
before, more people are likely to find a prison bed
open than a hospital.

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

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

And to the second question with the
First Step Act, I would like to see a nationwide
ban as well, federal, state, and local levels, not
shackling pregnant inmates, but also just educating
every correctional officer, whether it's a female
or a male. When women have substance
abuse issues, they more than likely have been
abused traumatically, physically, sexually.
And so like I've said in my written statement, a lot of post-traumatic stress comes about that, so training the correctional officers to deal with those needs are really important and I would love to see that in the second or third step.

CHAIR LHAMON: Thank you. Madam Vice Chair?

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

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

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

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

Did we get all that?

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

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

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

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

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

VICE CHAIR TIMMONS-GOODSON: So that 26
to 45 is basically within prime childbearing years and so I want you to talk about what the standard is in terms of providing gynecological examinations for women.

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

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

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

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

And I know you're going to hear about those later on today but a woman's reproductive
system requires significant attention and intervention, especially during childcare ages.

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

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

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

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

VICE CHAIR TIMMONS-GOODSON: Thank you.

CHAIR LHAMON: Thank you. Commissioner
Yaki?

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

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

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

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

What does the Bureau of Prisons do with regards to ensuring cultural and language access for these folks, some of whom speak dialects from
their native villages that are very difficult even
for normal translators to do?

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

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

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

So those are going to be primarily the
individuals that I think we're referencing here that may not speak the English language, although there could be some overlap there.

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

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

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

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

COMMISSIONER YAKI: Thank you.

DR. McLEAREN: We have translated several of our programs for women into Spanish so it is kind of our starting point and the majority of people that don't speak English speak Spanish in our system.
So we have translated and deliver quite a few of those programs. Our big residential drug abuse program that has a gender-specific piece to it or gender-specific program that is different than the male program also has a Spanish language program that women can choose to go to, even if they are more comfortable in Spanish but also speak English.

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

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

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

COMMISSIONER YAKI: When you talk about the pre-sentence report, you're talking about
people who have been through the full range of the
court system, right?

DR. McLEAREN: Yes.

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

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

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

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

COMMISSIONER YAKI: Sure. I don't want
to take up too much of the Commission time but what
I do want to ask you to follow up with is, is it
more than just a phone service?
Are there people detailed at any of these institutions, particularly along the Southern border, who have an understanding not just of the language but of the culture there?

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

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

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

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

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

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

CHAIR LHAMON: Commissioner Adegbile?

COMMISSIONER ADEGBILE: I’d like to add my thanks to all the panelists for all the important and thoughtful testimony.

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

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

But the Bureau of Prisons uses a custody classification system that's been validated on our population using data specific to our population. And men and women were evaluated and validated separately. There are different cutting
scores and values applied so that the tool is predictive for women that are in Bureau of Prisons custody. That's primarily to the risk portion although there are need pieces like substance abuse that are woven into that tool.

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

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

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

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

DR. McLEAREN: I was talking to you
about the Bureau of Prison's current procedures. We do not currently use the women's risk need assessment.

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

DR. McLEAREN: Yes.

COMMISSIONER ADEGBILE: What were the results of that study?

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

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

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

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

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

DR. SALISBURY: I can speak to that, yes. I'm not aware of anything that's been
published in terms of the custody classification
tool that's used with female prisoners by the BOP.

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

COMMISSIONER ADEGBILE: Fair enough.

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

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

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

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

DR. McLEAREN: As I said, we have
significant data to support our current approach.
I am familiar with this tool, we continually
evaluate our process, and I am happy to take this suggestion back to the agency.

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

Thanks for your responses.

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

For example, I would imagine that if I were to ask Dr. McLearen whether the experience of Ms. Winn is consistent with policies, it's my great hope that some of what happened to Ms. Winn and the very difficult circumstances in which she was forced to exist, possibly at the risk of her own life as well as that of her child, are probably not consistent with policies.
Perhaps Dr. McLearen can help me understand if I have that wrong? But I want to hear from you what are the core issues about where the practices are not meeting the policies?

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

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

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

Or you have contracting out to local jails, in which we know often don't provide the same long-term services that women need. So to speak to the state thing, I don't think it's that administrations don't want to do the right thing, I think that often they don't have the funding to do it. We're seeing in Wyoming just this week there's a lawsuit that a couple of women in prison
launched because of unsafe conditions of confinement. You see calls for overcrowding leading to shouts for new prisons in Oklahoma and other states.

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

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

There was a report, Gender Practice Risk Assessment, I'm getting the title wrong, of Logan Correctional Facility in Illinois that was really interesting to read, where they noticed that although they were trying to form gender-responsive training, correctional staff still held attitudes
that were very hostile towards women, called them derogatory names, didn't buy into the idea of a type of training that responded to unique female needs.

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

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

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

So part of the issues and things that I'm literally geeking out on lately is the science of implementation and understanding that we often times in corrections and in lots of different fields focus on the competency drivers of implementation, which means focusing on training
and selecting the right staff and hiring the right staff.

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

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

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

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

It also means that we have to just
continue to discuss this issue and tie it to performance evaluations of staff, are they actually adhering to what we call gender-responsive and trauma-informed care inside of prisons?

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

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

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

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

And if we want to really address and
embrace what we know to be state of the art with justice-involved women in terms of the evidence-based and correctional evidence, we have to make sure that we use, of course, the most state-of-the-art risk assessment tools.

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

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

CHAIR LHAMON: This is your last one.

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

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

MS. OWENS: I would say it's very important.
What we're doing now, having this conversation but also having conversations with leadership and hearing from formerly incarcerated women such as Pam and others, the education behind it forces the narrative and forces communication, and forces policy change, legislative change, and then implemented it.

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

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

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

ACU is in eight target states this year and last year we have seen tremendous growth with
addressing the trauma-related needs of women.

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

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

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

So I think that's really important,
there's some really good psychology, sociobiology literature that's coming out of UCLA in particular, that deals with how psychologically women and men differ.

COMMISSIONER ADEGBILE: Thank you.

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

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

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

So, I wonder if you could speak to the rationale for making that change and how it is
being implemented?

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

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

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

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

The vast majority of those individuals, about 80 percent, are individuals who were assigned to the male sex at birth. The change in the
Transgender Offender Manual is quite small and it was simply made to clarify the importance of safety and a variety of factors in looking at designations.

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

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

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

CHAIR LHAMON: That's enormously comforting. Can you explain what the genesis of the change in the manual was, given that you make these careful and detailed determinations that are
not necessarily in accord with that initial determination?

DR. McLEAREN: It was simply a clarification.

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

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

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

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

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

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

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

CHAIR LHAMON: Thank you.

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

DR. SALISBURY: Thank you.

Yes, I think that DOJ investigation has been incredibly important in actually setting precedents for understanding that we need to have
gender-responsive and trauma-informed care and policy and people who obviously understand the issue.

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

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

CHAIR LHAMON: Thank you.

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

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

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

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

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

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

So a social worker might not even know in what prison a parent's located. A prisoner might feel ashamed of having a child in foster care and might not let the correctional system know.
So some states have done a good job of starting to integrate that data sharing and that communication, but many have not.

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

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

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

CHAIR LHAMON: Thank you.

I said that was my last question but I lied, I have a new question that just got handed to me, which is, Dr. McLearen, could you speak to what the Bureau of Prisons is doing to ensure that state prisons follow the PREA, especially regarding anti-
shackling and feminine hygiene products guidelines?

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

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

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

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

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

COMMISSIONER Kladney: Thank you, Madam Chair. I'll ask my 15 questions as quickly as
possible.

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

Is that the way it is in every state?

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

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

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

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

DR. McLEAREN: We do not, no.

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

DR. SALISBURY: Yes, so thank you for
the question. I served as an expert witness and provided expert testimony, written testimony, to a case in Washington State with the Washington State Department of Corrections.

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

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

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

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

DR. SALISBURY: Absolutely, given the amount of sexual assault that women have experienced and where typically these things happen in terms of sexual assaults that happen inside prisons, yes, I would fully support that.
COMMISSIONER KLASDENY: Dr. McLearen, could you explain your division's role in selecting wardens for female facilities?

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

COMMISSIONER KLASDENY: I'm actually running out of time.

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

COMMISSIONER KLASDENY: Is there special training required for those positions as being a warden?

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

COMMISSIONER KLASDENY: Does the
executive staff have knowledge and experience with female offenders outside of your division?

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

   COMMISSIONER KLADNEY:  Okay, I appreciate that.

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

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

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

   DR. SALISBURY:  I would also say that
you do more than a tour, right, and that you actually spend time speaking with women who are incarcerated and deciding for yourselves who you're going to speak to, and not allow leadership inside of an institution to dictate who you talk to.

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

COMMISSIONER Kladney: So we could just hang out there?

DR. McLEAREN: In a manner of speaking.

COMMISSIONER Kladney: Because I understand you only have seven maximum security women and the rest are low and minimum, is that correct?

DR. McLEAREN: That's correct.

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

Thanks very much.

(Whereupon, the above-entitled matter
PANEL TWO - ANALYSIS OF WOMEN'S HEALTH, PERSONAL DIGNITY, SEXUAL ABUSE IN THE U.S. PRISON SYSTEM

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

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

Please tailor your remarks accordingly.

My mic is on and I'll lean in towards it.

In the order in which they will speak, our panelists are Julie Abbate, National Advocacy Director of Just Detention International, Andie Moss, Founder of the Moss Group, Dr. Jamie Meyer, Assistant Professor of Medicine and Assistant Clinical Professor of Nursing, Yale University School of Medicine, Dr. Carolyn Sufrin, Assistant
Professor of Gynecology and Obstetrics, Johns Hopkins School of Medicine, Betsy Ginsberg, Clinical Associate Professor of Law and Director of the Civil Rights Clinic at Cardozo School of Law, and Brenda V. Smith, Professor of Law, Senior Associate Dean, American University Washington College of Law and Former Commissioner, National Prison Rape Commission, Director of Project on Addressing Prison Rape.

Ms. Abbate, please begin.

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

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

But my experience with custodial sexual abuse of women prisoners started in 1993 when I co-counseled a class action suit with Brenda Smith at the end of the table, Women Prisoners v. The Department of Corrections for D.C. here in the
And that case established that the women prisoners here in D.C. had their Eighth Amendment Rights violated by staff rape and staff sexual harassment that rose to the level of a constitutional violation.

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

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

Private Eighth Amendment litigation is primarily limited by the Prison Litigation Reform
Act, barriers to access to courts, and by the issue of consent, and I put that word in air quotes and in actual quotes whenever I write it.

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

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

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

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

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

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

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

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

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

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

What works is to change the culture in
women's prisons, to change the way that staff
interact with women prisoners, to institute the
evidence-based, gender-responsive, trauma-informed
practices that most, if not all, of today's
panelists will discuss directly or indirectly.

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

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

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

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

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

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

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

Jurisdictions deserve credit for their progress to feel like their efforts are being recognized. The biggest challenge to successful
Culture change is sustainability. Change cannot be driven solely by a few individuals.

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

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

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

MS. MOSS: I just thanked you.

(Laughter.)

CHAIR LHAMON: We definitely want to hear that.

MS. MOSS: My name is Andie Moss, and my position today is informed by over three decades of working as correctional practitioner and consultant. My early work in Georgia, living on prison grounds in a massive reform effort, doing a
large lawsuit addressing staff sexual misconduct
and general conditions, really projected the arc of
my career.

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

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

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

I'm particularly honored to share in
this panel with colleagues who've been instrumental
in this long journey, particularly to address
sexual abuse in confinement. Three of us worked on major lawsuits 24 years ago addressing these issues. To give people context for that, it was before email, before websites, and before Google.

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

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

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

My written response provides context and examples that support my position. My position is this: Federal assistance has contributed to the development of research tools and many training opportunities for correctional staff that support a gendered approach. This was particularly true in
the 90s until recent years.

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

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

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

Gender-responsive principles have been a very important core strategy to work with the
field. Those principles were developed because there was federal assistance given to NIC during the time of the early 90s and mid-90s.

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

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

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

Wardens assigned to women's facilities are often starting without a knowledge base of any gender-responsive approach. Transformative
training, which has been referred to around creating a trauma-informed approach, couldn't be more critical. It is not one-off training, and it is not specifically programmatic.

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

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

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

We recommend funding for, reinstate the funding for the National Women's Resource Center of
Justice Involved Women. Fund NIC to increase outreach to the field, particularly in short-term technical assistance. And allocate target technical assistance to implement the PREA standards through a gendered lens.

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

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

CHAIR LHAMON: Thank you, Ms. Moss.

DR. MEYER: Good morning, and thank you for the opportunity to speak to you all today. My name is Jaimie Meyer, I'm a physician specializing in infectious diseases and addiction medicine. I'm
faculty on the Yale AIDS program.

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

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

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

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

And that's really important, because
women in the criminal justice system have multiple complex medical, psychiatric, and social needs that cannot be ignored. And those needs are more complex than those of men in prison, and they're more complex than those of women in the community.

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

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

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

So care for women needs to be evidence-based, and it needs to be equivalent to that available in the community. So think about what that might mean in terms of HIV. One in seven
people living with HIV in the United States pass through the criminal justice system every year.

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

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

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

People who test positive for HIV then need to have care rapidly available and initiated, including treatment with anti-retroviral medications. And this is important not only for individual, but also for public health. Because
when people have their HIV effectively treated, they are unable to transmit the virus to others.

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

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

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

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

Abstinence-only approaches do not work. People have very high risk of relapse after return to communities, portending high risk of overdose and recidivism.

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

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

As many others have talked about, care needs to also be gender-responsive. The World Health Organization defines gender-responsive care as a quality of care framework that really puts gender at the center of program planning, staff
capacity building, access to participation and monitoring of services, and advocacy.

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

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

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

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

DR. SUFRIN: Good morning, and thank you for the opportunity to speak to the Commission.
My name is Carolyn Sufrin, I'm an obstetrician/gynecologist and researcher at Johns Hopkins School of Medicine.

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

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

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

Some of the written testimonies cited statistics that 3-5% of incarcerated women are pregnant, that 1500 to 2000 births happen to women in custody each year. And while my esteemed panelists are citing the only available evidence, the truth is that these statistics are inaccurate.
They are decades old and limited in scope and methodology. We actually have no idea how many pregnant incarcerated women there are and what happens to these pregnancies.

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

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

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

My research team at Johns Hopkins will soon, in three weeks, publish the results of a study we conducted from 2016 to 2017 of pregnancy
outcomes in all federal and 22 state prison systems. In our study, there were nearly 1400 admissions of pregnant women and over 750 live births.

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

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

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

While the First Step Act recently banned shackling of pregnant women in federal custody, only 26 states have laws prohibiting the practice. And even when there are laws, it still
happens. Among the many medical risks, shackling at any point in pregnancy can increase the risk of falls, which can lead to placental separation, hemorrhage, and still birth.

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

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

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

Incarcerated women must also have
access to cervical and breast cancer screening and follow-up, according to national guidelines, but this is not consistently available. Research has shown that the majority of incarcerated women plan to be sexually active on release and want to avoid pregnancy.

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

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

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

For older women in custody, menopausal
symptoms like hot flashes, for instance, are hard to endure when you can't control your own environment and when you don't even have access to ice. Transgendered individuals are denied access to hormone therapy and placed in unsafe housing, as we have discussed.

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

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

We must work towards a larger goal of not locking up so many women, especially pregnant ones. But in the meantime, we must ensure that all of these women get quality, comprehensive,
reproductive healthcare by doing, among other things, the following.

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

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

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

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

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

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

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

What made that situation unique was not
the treatment of the detainees there, but that federal, state, and local lawmakers, a federal judge, and other stakeholders made their way into the institution, talked to detainees there, and saw what was going on.

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

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

As we've heard today, prisons are designed for men, they aren't designed to provide healthcare, and women have distinct healthcare needs. Women in prison derive legal rights to healthcare from the Amendment's prohibition on cruel and unusual punishment, state tort law, and disability discrimination statutes.
But despite formal legal protections, women prisoners are frequently denied basic medical care. Both practical and doctrinal barriers make it difficult for them to access the legal system in order to bring these claims of deprivation of medical care, and I want to address a few of these barriers now.

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

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

The Prison Litigation Reform Act erected a series of hurdles that apply to prisoners seeking to enforce their rights through the federal courts. Two of these hurdles, the administrative...
exhaustion provision and the attorneys' fees 
provision, make it particularly difficult for 
prisoners to have their cases heard in court.

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

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

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

The subjective standard also allows 
courts to pay tremendous deference to prison
officials, often characterizing a prisoner's Eighth Amendment claim as a disagreement with medical staff that doesn't rise to the level of deliberate indifference.

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

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

While litigation continues to be an important mechanism for change, it remains a difficult path. Successes are achieved, like last month's injunction against the Virginia Department of Corrections, finding Fluvanna Correctional Center for Women to be providing constitutionally deficient care. But such successes are long, hard-fought battles by large teams of lawyers whose
resources don't permit enough replication of these kinds of cases.

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

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

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

Our legal system offers one solution to trans women whose health is, and safety, is compromised by the prison system, but access to that system is hard to come by. Two months ago, a federal court in Idaho granted Adree Edmo a
preliminary injunction requiring prison officials to provide her with gender confirmation surgery.

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

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

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

Despite ample evidence that men's prisons are not safe for many trans women, most
states will not house trans women in women's prisons.

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

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

CHAIR LHAMON: Dr. Smith.

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

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

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

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

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

I will start with my recommendations, then I will talk about the basis for those recommendations in my testimony, in the event that
I run out of time. My recommendation are as follows: first, consistent data collection, qualitative and quantitative, on women's experiences in custodial settings.

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

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

Four, create alternatives to imprisonment that address the root causes of women's imprisonment—addiction trauma; education; and housing instability.

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

Seven, eliminate cross-gender viewing
and searching of women by men. Women should not be observed while they shower, dress, use the bathroom, or are unclothed for medical visits.

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

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

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

We were also fortunate to be able to submit a letter to the BOP challenging and speaking to our consternation about the change in the transgender policy.
What is clear from my work in so many settings and over so many years is that abuse and disrespect for women is a defining feature of our custodial system. Unlike men in custody, women are not going on hunger strikes or taking over institutions that abuse them, as Heather Ann Thompson described in her book, Blood in the Water, about the 1971 Attica Prison uprising.

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

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

Men had access to apprenticeships in plumbing, electrical, and auto repair, while the most that women could aspire to was to work in the
kitchen, cleaning, doing laundry, and sewing. So, often women traded sex for phone calls, for getting their papers moved, and also for visits or money to send to their family.

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

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

We should do this in order to increase their likelihood of success upon return to their community and to enhance their ability to contribute to the community upon their release.

Thank you.

CHAIR LHAMON: Thank you very much. I'm going to open for questions from my fellow Commissioners. And just to say at the outset that
I know Commissioner Narasaki has a hard stop at 12:10 and so is going to need to head out. And so if she leaves and we are still ongoing with the panel, she's not commenting on what you presented.

Commissioner Yaki, do you want to start us?

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

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

Part of the access is access to quality medical personnel. And I'm wondering, what is the status right now of the certification process for someone to become a doctor in a prison system?
Because it used to be pretty low.

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

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

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

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

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

And my understanding is that they do
need to have an active medical license. I do not know what happens at the level of the state board of medical licensure in terms, and the prison that's hiring them. Or sometimes it's not actually the Department of Corrections that's hiring them, but it's a privately contracted healthcare organization.

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

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

Now, there are many wonderful healthcare providers in prisons across the country, but then there are others who cultivate their own
judgements and assume a lot of the punitive aspects of the culture in which they're working. In addition, sometimes people are not adequately trained in the problems that they're going to be seeing.

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

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

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

And I know as an obstetrician, any vaginal bleeding in pregnancy can be a sign of danger. Even if it's just a little bit, it can be
a sign of an ectopic pregnancy, a pre-term labor, many other things. And when I saw this record, it said the nurse said, Oh, you're not soaking a pad an hour, you're fine.

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

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

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

DR. MEYER: I might add that not every person who delivers healthcare in a prison needs to be a physician employed by a department of
corrections. That there are a lot of different models of care out there that could be employed and are quite evidence-based and effective, but they are rarely employed.

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

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

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

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

DR. MEYER: Yes.

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

DR. MEYER: Right.

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

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

CHAIR LHAMON: Professor Smith.

MS. SMITH: If I may, and I think it was the point, it was actually the ending comment about transportation. Women have problems being
transported from their housing units, sometimes even up to the medical care that's in the facility.

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

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

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

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

MS. SMITH: Yes.

CHAIR LHAMON: Commissioner Narasaki. And also, if I could just let folks know, please turn your microphone off when you're not speaking, because we only have so many that can be on and audible at the same time.
COMMISSIONER NARASAKI: Thank you, Madam Chair. Professor Smith, in your written testimony, you mentioned that the Violence Against Women Act specifically prohibits services and funding for services for anyone with a history of a felony. How did that come about, and are there efforts to change that?

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

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

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

But I think our further understanding of victimization has allowed us to know that there
are victims both inside custody and outside of
custody, and that often there's a trajectory or a
move of women who've been victimized in the custody
to actually end of in custody as well.

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

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

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

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

And you can see that if you look at the
CRIPA reports that have been prepared for Congress
every year. For example, in the Bush
Administration, there was a huge focus on conditions of confinement in juvenile facilities. You will see that there have been none of those cases for the last six, seven, eight years because of different focuses on, within a specific statute.

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

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

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

Like what you all are doing now, this is a briefing on women in prison. If this were a
briefing on prison or people in prison, you'd have one person out of, I don't know, 40, and that one voice would be powerful, but it would be so diminished by the rest of the other equally powerful voices with equally powerful concerns. And they're competing, and they're both important, and they all need to be heard.

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

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

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

I've seen cultures that have been really problematic and really abusive and really
awful for women change dramatically. You'll hear about that this afternoon. And those cultures have changed based on implementing gender-informed, gender-responsive, trauma-informed care.

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

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

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

I don't understand why, what the
rationale is for that. And what would be the
alternatives? Is it just that the rationales given
for solitary confinement are not valid? Is there a
need for alternatives?

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

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

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

Because even though I'm no longer
working on that case in Tutwiler, I was thrilled to
get an email from her over the summer that, it was
a screen shot of her list of folks, list of women
who are in segregation, and there was nobody there. There was nobody there.

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

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

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

But to the extent that there's training, that there's support of the kind that folks have received as a result of litigation, right, because often I have to say some of the best folks in corrections I know have actually said please sue me so that I can actually get access to services and resources.
Because there are actually folks that want to do the right thing. But unfortunately they only get that when there is a crisis, and it should not be that, right. It shouldn't be that Tutwiler actually was able to become better and to have no women in segregation as a result of having to be sued.

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

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

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

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

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

CHAIR LHAMON: Thank you. Madam Vice Chair.

VICE CHAIR TIMMONS-GOODSON: Thank you very much, Madam Chair. This question arises based on a newspaper article that I read a couple of days ago in my state newspaper. It's the story of a post-operative transgender prisoner that's been sentenced to roughly ten years in prison. And
she's recognized by her birth name, a male name, but that name, you know, she legally changed it.

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

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

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

And I think, you know, the first thing I would do, advocating with someone like that, is talk to them about where they would feel safe. And
I think that's what the prison is required to do. And so for some people, it may be that the only place that person's going to feel safe is in a women's prison.

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

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

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

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

MS. MOSS: I want to also add that it's really important that we prepare the population and the staff. Because I think when we're --
VICE CHAIR TIMMONS-GOODSON: At the
women?

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

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

VICE CHAIR TIMMONS-GOODSON: Professor
Smith?

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

And I think as all of the panelists
who've spoken have said, would actually require
some training specific to that particular situation, and also the ability to be flexible in situations that are not all the same. And I think that that kind of flexibility is not common often in institutional settings.

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

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

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

VICE CHAIR TIMMONS-GOODSON: And in all fairness to the state system, they're aware of it and they say that they're looking into it, so that suggests that they're taking the time to give it
the attention and to come up with some kind of individualized, you know, result. Thank you. Yes.

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

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

CHAIR LHAMON: Thank you. Commissioner Kladney.

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

Is there any way some professional organizations can get together and decide what
standards should be used for BFOQs for certain staffing positions, medical care, medical decisions, medical equipment needed in infirmaries, mental healthcare, things like that? Because, or how many, say, medical staff is needed to treat X amount of women?

MS. MOSS: Right. You're very good at multiple questions, I noticed.

COMMISSIONER KLADNEY: Well, I got to ask them when I can.

(Laughter.)

MS. MOSS: So let me just say I feel very strongly that the strategies to make this all better are there and not utilized.

And what I mean by that is, for instance, and I'm sure Director Bertsch will speak to this, the Association of State Directors of Corrections, the 50 states and the territories and urban settings that belong to that, they do look at how to standardize particular practices. They share practices with each other.

I know that Yale works with them on restrictive housing. But there is a receptiveness right now to what works and what do we need to have
the courage to do to work in this area. And so I think progress can be made by using existing professionals opportunities.

Certainly, the medical folks on this panel know those, you know, those standards and environments where that can be true too, the National Correctional Healthcare Association. The American Correctional Association is our major industry professional organization, along with American Jail Association, the American Probation and Parole Association.

We do not really take advantage of the capacity building that can happen with leaders in those associations. You often see very little presentations on women offenders in some of those conferences and so forth. I know that there is a receptiveness. I think we can explode that more.

The issue that I feel so strongly about around federal assistance is we have some wonderful tools. You heard Dr. Salisbury this morning, but there are other tools. There's one that's a safety scale developed by Doctors Wells and Owen that we used at Tutwiler that actually looks at safety per housing unit around physical, emotional, sexual
safety.

And from that, you can really target how to create cultures of safety. So I think connecting these associations with tools that exist and with the information we do know can be done, we have to be strategic. And what has slowed down really is the lack of funding that has been present to do some of that work.

DR. SUFRIN: I'd like to speak about the potential for standardization in medical societies. So the American College of Obstetricians and Gynecologists offers guidance for what services should be provided, reproductive healthcare services should be provided in prisons and jails.

The American Correctional Association does have a healthcare arm that does have some standards, and they do offer an accreditation program, although the standards they have that relate to reproductive healthcare are very thin.

The National Commission on Correctional Healthcare was founded in 1983. It started as a pilot project from the American Medical Association. And the NCCHC, which is a nonprofit,
it accredits healthcare facilities in jails and prisons.

And it accredits facilities that meet its rigorous standards that include details about what kinds of services should be provided, staffing ratios, the safety of the healthcare environment, pharmacy formularies, they're very extensive.

So there actually already is a system and a model in place for accreditation. Requiring this as a national standard would not be reinventing the wheel. And it's not to say that the NCCHC's system is perfect, it certainly could use some improvement.

But it is fairly robust, and the standards that they publish and that they accredit based on are reviewed and revised every two to three years.

(Off-microphone comments.)

DR. SUFRIN: But it is voluntary to be accredited, and less than a third of prisons and jails in this country are accredited by the National Commission on Correctional Healthcare.

I also should probably have the disclaimer, I serve on the Board of the NCCHC as
the liaison for the American College of OB/GYNs.
The views I expressed just now are my own and not
the organization's.

COMMISSIONER KLADNEY: Thank you. Dr.
Meyer, you do infectious diseases. And all these
women that are incarcerated, at least in the
federal system, are getting out of prison, I think,
most of them. And if all of them have an
infectious disease and you're treating HIV, which
other ones do you treat and which ones don't you
treat in your capacity?

DR. MEYER: Okay, so I should say that
I practice HIV care and Hepatitis C care. I served
as an infectious disease consultant for the
Connecticut Department of Corrections up until
2016, when they took over all their own healthcare
and healthcare delivery, and no longer forwarded
that out to our group.

So, yes, a very high proportion of
women in prison are living with HIV, so 2.6%, which
seems small, but that's about five to seven times
higher than the prevalence of HIV in surrounding
communities. Many more experience HIV risk.

Hepatitis C, also extremely common,
especially among women. Women are 1.5 times more likely than men in prison to screen positive for Hepatitis C. That condition is rarely treated during incarceration. So only about 14 out of 49 surveyed state prisons and jails, 14 states, actually screen for Hepatitis C at all, never mind treat it.

So fewer than one percent of people living with Hepatitis C ever get it treated while they're incarcerated. And yes, that definitely means that on return back to communities, they can unwittingly continue to transmit to others, and part of the reason why women in prison are really a key target population for prevention.

Other infectious diseases, we talk about sexually transmitted infections. Women in prisons much more likely to experience chlamydia, gonorrhea, latent syphilis. All these things are completely treatable, even with penicillin, you know. But if you don't look for it, you don't treat it, and so --

COMMISSIONER KLADNEY: And do prisons look for it?

DR. MEYER: No.
COMMISSIONER KLADNEY: Or is it the 14 that you were talking about?

DR. MEYER: So the 14 screen for Hepatitis C, you know, 17 states screen, routinely screen for HIV.

That's not so many, and not everyone receives routine screening for sexually transmitted infections on entry, either, which is a travesty, because it's very easily treatable, and you know, and has profound consequences, not only for public health as we're talking about, but for individual health if it goes untreated.

COMMISSIONER KLADNEY: And if you could talk about, you did talk briefly in your statement about MAT and the lack of it. Why do prisons choose not to treat with medication and require people to go cold turkey, so to say? That was a term from my generation.

DR. MEYER: I get it, I get it. Yeah, so I'll just say medication-assisted therapy, for those of you who don't know, is an evidence-based method of treating substance use disorders. Highly effective, not available for all substance use disorders, but certainly for opioids and alcohol,
which is like the primary substance use disorders that most people in prison experience.

Rarely available, includes for opioids for example, methadone, buprenorphine, and naltrexone. So the issue that facilities often face is that methadone, by federal requirements, a facility that is delivering methadone needs to be federally licensed to deliver methadone. And so many prisons and jails, whether it's a cost issue or a time/energy/effort/interest don't become licensed.

Now, outside facilities that are licensed can come into the facility, prisons and jails, deliver methadone. But this is also rarely done. It's happening more, but doesn't happen much.

Buprenorphine, you don't need any special license to do. Physicians, I have one, physicians can apply to have a DEA waiver to prescribe buprenorphine. You don't need any special, you know, other than that, you don't need any special training or anything to deliver buprenorphine, and it's highly effective.

So I think there's the lack of interest
and energy, and sort of it's a belief issue.

COMMISSIONER KLADNEY: Well, that is the standard today.

DR. MEYER: It is.

COMMISSIONER KLADNEY: Is treatment with medication, not to completely get off the drug. I mean, that's ideal, but it doesn't happen, is that correct?

DR. MEYER: Yes, so the standard is a combination of medication-assisted therapy with behavioral therapy. So sort of a comprehensive approach, and people aren't getting that at all in prisons and jails.

COMMISSIONER KLADNEY: And Ms. Abbate -

CHAIR LHAMON: This is your last one.

COMMISSIONER KLADNEY: I know. I know this is my last question.

MS. ABBATE: Yes, sir.

CHAIR LHAMON: Your first last question.

(Laughter.)

COMMISSIONER KLADNEY: Let me ask all five of them in one question.

MS. ABBATE: All right. I'm ready.
COMMISSIONER KLADNEY: My question is, would the litigation changes have occurred in Alabama without the power of the consent decree? And do you think that that is -- the consent decree bar that's currently in effect affects that litigation today?

MS. ABBATE: No and no. So, no, I don't think that the changes would have been sparked without federal intervention. But, no, I don't think that the consent decree bar today should have any effect on that or on other future settlements. And the reason is --

COMMISSIONER KLADNEY: No, I'm talking about future, current -- excuse me, I didn't mean to interrupt. But --

MS. ABBATE: No, no, for future cases, right? No, because the reason that, I think the reason that Tutwiler has been successful is not because the piece of paper says consent decree or settlement agreement.

The reason that Tutwiler has been successful is because that jurisdiction, that women's division has owned their change. They've had the consent decree behind them to say, hey
look, we have to do this.

They are the people that Professor Smith was talking about who say, hey, they didn't, but, hey, come sue me, we need some changes. They totally didn't.

But, right, but my point, I mean, those are the same type of people. Those are the type of people that are in corrections agencies and facilities all across the country who want to do what they know is right and what they know works. And they are rolling a boulder uphill in the mud knee deep and just facing challenge after challenge. And so oftentimes it is nice to have that in there.

To make the change meaningful, there has to be a culture change. And that doesn't matter what form a settlement agreement takes, whether it's court-enforceable or not court-enforceable. If you get a court-enforceable consent decree and people aren't doing what they're supposed to do and you get a federal judge to say do what you're supposed to do, you're in the same place. You're nowhere better off.

You've got to get the buy-in. You've
got to make sure the consent decree is workable, the remedies work for the facility, timelines are workable. And that's the only way you can get it to change when you're talking about culture change, about sexual abuse in women's facilities.

CHAIR LHAMON: I realize that we're over time. But I just wanted to follow up on that. I found it very compelling in your written statement the information that you included about your expectation, that open investigations at DOJ should have concluded but have not yet concluded.

And I wonder if you can give us information, for those of us who don't stand in your shoes, we're not working there at the time that you were, how we would know to expect that those investigations should have concluded and what suppositions we can draw from the fact that they have not.

MS. ABBATE: So I think that one public indicator of progress of cases are those yearly CRIPA reports. They're organized very strangely because they talk about cases filed and settlements.

But the first step is an investigation.
After an investigation comes findings. After findings come negotiation and hopefully settlement or file a case. Sometimes you file a case and a settlement at the same time if you want it to be court-enforceable, Rule 41 stuff, without being an actual consent decree so you can avoid that stigma for the jurisdiction.

I think just be aware of how long things have been opened. If you see something that has -- findings have come out for an investigation, they will say when the investigation opened. Do the math. How many months does it take? Is there anything that started before those findings came out, because those are the ones that are the stragglers? And there are some definite stragglers.

CHAIR LHAMON: Thanks very much. We are past time. So I thank this panel for your testimony and your expertise. And we very much appreciate it.

We will return at 1:10 to begin our third panel. Thank you.

(Whereupon, the above-entitled matter went off the record at 12:13 p.m. and resumed at
1:11 p.m.)

PANEL THREE: REVIEW OF TREATMENT OF WOMEN WHILE INCARCERATED

CHAIR LHAMON: And thank you for your continued attention to this important topic. We're going to now proceed with our third panel, which is titled -- Ms. Pupovac, we have started. Ma'am --

Okay. We're going to keep going.

Thanks, thanks. Okay. We're now proceeding with our third panel, which is a review of treatment of women while incarcerated.

Given some of the topics that come up with regard to women in prison, I remind the panelists and the public and my fellow Commissioners that since 1983 Congress has prohibited the Commission from taking in or serving as a clearinghouse for information about abortion. Please tailor your remarks accordingly.

In the order in which they will speak, our panelists for this panel are Lashonia Thompson-El, Executive Director of Women Involved in Reentry Efforts, W.I.R.E., Judith Resnik, Arthur Liman Professor of Law, Yale Law School, Leann K. Bertsch, Director of Correction and Rehabilitation,
North Dakota Department of Corrections, Jessica Pupovac, freelance reporter, and Dr. Wendy Williams, Deputy Commissioner of Women's Services, Alabama Department of Corrections. Ms. Thompson-El, please go ahead.

MS. THOMPSON-EL: Good afternoon. Thank you so much for having me today.

Before I start, I would like to add a couple things to my testimony that are not in my original testimony that I submitted because I recently received word from SFF Hazelton that there's a very bad drug problem there and that of the 31 women in segregation all but 2 of them are in segregation for drug-related offenses.

And I also received news that a woman who I believe might be a D.C. resident because her last three digits are triple 0, she's 49 years old and recently died on Valentine's Day in SFF Hazelton. The facility was on lockdown and she was complaining of chest pains and was ignored and ultimately passed away on Valentine's Day of 2019.

My name is Lashonia Thompson-El. I am a resident of the District of Columbia. And I spent 18 years in prison. I went to the federal
system in 1998 after the Revitalization Act was passed here in the District of Columbia. So, prior to that, I had spent five years here at CTF. I was sentenced to 20 to 60 years. And I was released in 2011 after my initial parole hearing.

Since I've been home, I've been privileged to work at the Mayor's Office on Returning Citizen Affairs here in the District of Columbia where I worked on female reentry-related issues. I also worked at the Correction of Information Council here in D.C. And I was inspecting conditions of confinement where D.C. residents are incarcerated in FBOP.

I'm currently employed at the D.C. Office of the Attorney General where I serve as a restorative justice facilitator. And I work with youth involved in the criminal justice system facilitating conferences with youth who cause harm and youth who have been harmed.

I would like to speak a little about the D.C. criminal justice system because, as you know, we don't have a prison system. So all of the women who are convicted of felony offenses in D.C. who are serving more than a year are sentenced
through the Federal Bureau of Prisons even though they're serving local crimes, time for local crimes.

And so many of them are in Waseca, Minnesota, Aliceville, Alabama, Carswell, Texas. And quite a few of them are at SFF Hazelton.

Obviously, the distance away from home makes it very difficult for women, D.C. women in prison to receive visits from their families and their children.

As of November 2018, there were 161 women who are D.C. residents in the FBOP. As I said, that includes 39 in Hazelton, 15 in Philadelphia, and also Dublin, California, and Carswell, Texas, and Minnesota.

Next I would like to speak about the inhumane treatment that I experienced while I was in the FBOP as a result of overcrowding. There was one instance where I spent time in the segregation, in SHU, the segregation housing unit for a minor offense where I spent 40 days in a SHU, 3 women to a cell. One was on a mattress on the floor.

There were times when we were denied an opportunity to take showers because the claim was
that there was not enough staff. I believe policy states three showers a week. There were times when we got no showers at all.

There were times when we had to stay in segregation because general population was filled to capacity. So you had to stay in there and wait for a bed to open up in general population, which means somebody had to go home or either you had to go out when someone came in.

I'm sure that many of the people on this panel already understand the impact that solitary confinement has on women who are already suffering from trauma.

Many of the sanctions that women are in solitary confinement for could be handled on a UDC level, which is the unit disciplinary committee, so they don't have to necessarily go into segregation or go before the DHO for the minor offenses that they are being locked down for.

So a woman can go to the SHU for taking fruits or vegetables out of the kitchen. Whereas, a man would only go to the SHU for something much more serious like fighting or having a weapon.

The offenses are not equal for the
punishment that women are receiving. And that's because the segregation is usually not as crowded in the facilities where women are because, obviously, their numbers are lower and many of them are not engaging in the sort of aggressive behaviors that men engage in.

So I believe that solitary confinement is being used more as a tool of oppression than it is to actually address disciplinary problems.

I have worked closely with Senator Booker's office and doing some work around the First Step Act with the National Council of Incarcerated and Formerly Incarcerated Women and Girls.

And one of the biggest things that concern me is whether or not these decisions to stop shackling pregnant women will actually be implemented. Will we actually provide oversight? And will we actually enforce these new regulations?

Also, when we say that women need to be at least 500 miles from home, will we actually recognize that that's still too far and that it causes, it's just a huge burden for caregivers who are often elderly people from disenfranchised
communities who absolutely can't afford a plane trip to a rural area to have children visit with their mothers?

I would like to take a moment to talk a little bit about the U.S. Parole Commission and the fact that local women who are serving time for local offenses are being seen by the United States Parole Commission and being sanctioned under federal guidelines instead of D.C. guidelines.

And so, as a result of that, we have an elderly woman right now who has many, many health issues who has received her second setoff for three years. The U.S. Parole Commission has asked her to serve an additional three years even though she's aged out of crime, even though the offense that she's incarcerated for would never change. But because the federal guidelines are much stiffer than D.C. guidelines, they've basically changed her split sentence into a life sentence.

I would like to talk about the fact that we have decided as a country to prevent people in prison from reading books. I've learned from women who have recently been released from BOP facilities that it has become increasingly
difficult for family members to order books from preferred vendors and that books are basically becoming obsolete.

And for women who are in segregation, this just makes the mental aspect of being confined much more difficult. It makes their trauma much more worse.

I'd like to speak about the programming. I believe that the FBOP should develop an institute residential intensive trauma programs for women, programs like the one spearheaded by Dr. Onorato at FCI Danbury in the early 2000s.

Women were able to live in a therapeutic environment and learn skills to cope with trauma and do it prior to incarceration, during incarceration, and after incarceration. Learning life skills like how to regulate trauma, how to keep yourself safe, and how to recognize one's triggers are key to transformation and successful reintegration.

As you all know, research shows that women who have access to a higher education are less likely to recidivate. And I implore the FBOP
to offer women in their custody access to accredited college programs.

Another response to trauma that women confront in prison can be to employ more qualified to work in the FBOP where women are housed. With the vast number of correctional officers who are white men, there's a culture within the FBOP that threatens the overall dignity of women in prison.

These potential female employees need to be willing and prepared to work with women. They will need sensitivity training, trauma-informed training, and more. The fact is that prison guards often tend to be more punitive toward people they can identify with.

To improve the inhumane conditions of confinement within the FBOP, it will take brave people who are willing to see beneath the surface of institutional policies that justify abuse. We need brave men and women who are willing to hold the FBOP officials accountable to women in prison, their families, and communities. Thank you.

CHAIR LHAMON: Thank you very much.

Professor Resnik?

MS. RESNIK: Hello. My name is Judith
Resnik. I am the Arthur Liman Professor of Law at Yale Law School. I'm joined by Alexandra Harrington, Senior Liman Fellow in Residence, and by Molly Petchenik, a Yale student, both of whom helped to put together our materials.

I'm honored and I am also moved by the expertise, experiences, and commitments of the people in this room. And I want to thank the Commission for convening this hearing.

I have to say, as a very baby lawyer in 1997, I testified at a hearing called the Forgotten Women Offender in the House of Representatives. It is wonderful to see that the Commission has reinvigorated commitments and to see how much information is available here that could seriously change the American landscape on these issues. I want incredibly quickly to flash some numbers and information to try to consolidate some of what you have heard and then return to some of the questions raised.

One question is: what's the prison population? The answer is that about 1.5 million people are in prison, and of that number about 116,000 are women held in federal and state
facilities. In the federal system, the prison population (shown on the accompanying power point, as slide 2) is about 180,000 people and 12,000-13,000 of those individuals are women. As the slide I am showing also depicts, there are 133 facilities in the federal system and 29, as you've heard, house women.

Today, much discussion has been had about a statute called the First Step Act. We thought it would be helpful to provide brief excerpts, shown in slide 3. The text says that healthcare products, translated as products that women need every month for when they're menstruating, must be available free. And the statute also says that pregnant women should not be put into shackles.

Now, on one hand, this is great news. On the other hand, this is incredibly depressing news. It's 2018, and it takes a federal statute to say, in essence, "don't chain women when they're pregnant and give them what they ordinarily need to take care of themselves." So this is good and sad news. The next excerpt (slide 4) of the First Step Act shows that it also talks about placement, which
we just heard from others is so important. The statue provides that a prisoner ought to be housed presumptively within 500 miles. As slide 4 also depicts, if you look back in 2006, the Bureau of Prisons (BOP) said exactly the same thing in its policies. If you go to the 1972 Attica Report of which Arthur Liman was the central author, he wrote (as quoted on slide 4) how “worrisome” it is that we put prisons in remote places far from view and far removed from the homes.

So whether it's 1972, 2006 or 2018, we're still talking about 500 miles. That distance imposes huge and impossible barriers. Let me show you how that works on the ground.

In 2013, the Liman Center was involved in this question because the Federal Bureau of Prisons wanted to close its only facility for women in the northeast. To understand the impact, we obtained information from the Bureau of Prisons that, of the 815 women or so who were there, in Connecticut, with U.S. addresses, 70 percent were from regions outside of the northeast. They were extremely far away. The details are on slide 5.

As you'll see from the slide 6, and
this responds, Commissioner Kirsanow, to your question about where people are, the map created provides more information. It gives you the numbers of women and men housed in different regions and whether those facilities were overcrowded -- across the United States.

Slide 7 is a quick glimpse of an incredibly sad additional fact, which is that in Danbury, Connecticut, the only northeast facilities for federal prisoners who are women, under 350 women have housing. Further, according to the BOP website, the hours for visiting women are less than those provided the men at the same location.

The same slide provides information on Aliceville, where the BOP holds more than 1,600 women. Aliceville is not a good place to be if you're from Alabama. It's in a remote area near Mississippi. It's a terrible place to be if you're from other places -- in terms of services, in terms of access to religious volunteers, in terms of all that prisoners need.

So, point one, what do women in the federal prison system need? Oversight for the First Step Act. Slide 8 makes this point by listing
the key facets the Act provides. What is the availability on the ground of personal hygiene products? How safe are women when they are pregnant? Where are they placed and why? Why are people sent far, far away?

Other important aspects of the First Step Act are sentencing reduction, good time credits. Our questions are: are women and men of all colors getting them, what are the proportions and where are the education and vocation programs? You have heard Professor Smith talk so importantly about women as economic agents. We need to be talking about economic agency, and therefore to learn: what are the programs? Where's UNICOR (the federal prisons' industries program)? Who's being paid what in the federal system? We need all the facts on the ground.

I turn now to the next question that you asked specifically that we address: discipline. Given the time, I will do so quickly.

First of all, slide 9 lists the several studies that were undertaken by the Liman Center and the Association of State Correctional Administrators, the remarkable group of people who
run the prisons around the United States of whom
Director Bertsch was the president up until
recently. We have done a series of reports. In
your record is the most recent 2018 report about
what corrections calls “restrictive housing” and
most everybody else calls solitary confinement. I
have a copy with me. What we know from 43 states is
that they reported, as of the fall of 2017, that
49,000 people were in their restrictive housing –
22 hours or more, 15 days or more. Using the full
prison population, we estimated that about 60,000
people in the United States are in 22 hours or
more, 15 days or more.

I need to add that these data are only
from state-wide prison system administrators. We
also know that people are held in solitary
confinement in jails and other detention
facilities. In terms of prisons, we know that
several thousand have been in those conditions for
more than three years. And, data from prison
systems tells us that, under their own definitions
of “serious mental illness,” at least 4,000 people
whom these systems describe as seriously mentally
ill were in restrictive housing.
Come to the question of the numbers women -- women are a relatively small percent, 1.2 percent, of the solitary confinement population. But as we know, women are both over-incarcerated and underserved.

If you look at the next slides (10-15), which I'm just going to run through, we have data by jurisdiction. As you can see from (slide 14), men of color are more represented in the restricted, solitary population than in the general prison population (in which they are also over-represented as compared to the general population outside of prisons).

Slide 15 makes plain that women of color are much, much more represented in the solitary population than they are in the general population of the prison system. As you can see, our data identified that black women were almost 40 percent in the restricted housing population in the jurisdictions reporting such data to us, whereas, they are about 23 percent of the general prison population.

Let's just go quickly through the remaining points. Pregnant prisoners. As of the
time we did this survey, as noted on slide 16, none of the jurisdictions that reported data to us on this (more than 30) said they had any pregnant prisoners in solitary. As you know, we have also heard from people individually that on occasions pregnant women have been held in solitary.

Transgender is another subpopulation of concern. Of the 38 jurisdictions reporting data to us, they identified 2,4444 transgender individuals; twenty-one jurisdictions reported that some were in restrictive housing, and that total was 157.

In the next slide (17), the good news is the American Correctional Association is trying to call for less use of restrictive housing. And in the next slide (number 18), we provide the international picture; the Nelson Mandela Rules, promulgated by the United Nations, call for no more than 15 days for anybody, because more than that is torture. Slide 19 serves as the reminder that in 1950, the UN Commission on the Status of Women resolved to look at the problem of women in prison. Then, as now, there is much to be done.

So, in terms of operationalizing what it is that the Commission could do, our proposals
include first, mechanisms are need to oversee the implementation of the First Step Act and how women, men, and transgender individuals are affected. Second we need more “steps.” Fifty miles or seventy-five miles from home is plenty far enough. If you can't put someone within 50 or 75 miles, maybe that person need not be incarcerated at all. Decarceration is the central agenda. As for solitary, it is time to stop it.

CHAIR LHAMON: Thank you so much, Professor Resnik. Thank you.

MS. RESNIK: Time to stop it. Thanks.

CHAIR LHAMON: Ms. Bertsch.

MS. BERTSCH: Good afternoon. It's a pleasure to be here. I'm Leann Bertsch. And I've served as the Director of the North Dakota Department of Corrections and Rehabilitation since 2005.

Over the last 20 years, the women's prison population in North Dakota has grown at a rate of almost 500 percent, roughly double the rate of the men's population.

Currently, the 210 women in custody in
North Dakota make up about 12 percent of North Dakota's overall prison population, which is well above the national average, which is around 7 percent.

The women in our custody tend to be in their early to mid-30s. Their average length of stay is approximately 235 days. But a small percentage are serving multi-year sentences. About 16.5 percent of the women have returned on a new conviction after a previous DOCR sentence. And about 40 percent are incarcerated due to parole and probation violations.

Although the North Dakota Department of Corrections and Rehabilitation has been recognized nationally as a leader in prison reform, we have not been meeting the needs of our women's population. Our women's program is not only less comprehensive and robust than our larger men's program but has also failed to address many of the needs specific to incarcerated women.

Improving our women's program is one of our main priorities in the coming years. And it has been a focus of the current state legislative session in North Dakota.
In my testimony today, I would like to talk about the challenges for our women's program historically, as well as some of the areas we are focusing on in our reform efforts.

The number of women incarcerated in North Dakota is small. And in many ways, the women have been treated as an afterthought. My previous women's services director, who served with us for 36 years, would remind me that when she started there was only 6 women incarcerated in our system. So being treated as an afterthought wasn't so rare because there were so few of them.

So, over the past 25 years, they've moved between a variety of facilities, none of which was originally intended to incarcerate women. Until the late 1990s, they were held in a unit at the main state penitentiary where our maximum security men are housed. In 1998, they were moved to a unit in our medium security men's facility.

And in 2003, the Department of Corrections brought forward a plan to the state legislature and said they need a facility designed and built for women.

However, the state legislature decided
to move the women to a former Catholic boarding school built in a remote part of the state in order to support economic development in the region. The women have remained in this facility since 2003.

The facility is not meant to house incarcerated women. And its structure and layout are not ideal for a variety of reasons.

Furthermore, the remote location has prevented the women from receiving the volume and range of services that our men, who are more centrally located, receive. The location has also made it challenging to meet the rehabilitative, medical, familial, emotional, and cultural needs specific to incarcerated women.

The history of the women's system in North Dakota exemplifies the way that women, who compose only a small percentage of the prison population in every state, can often be overlooked by state systems.

Women are moved where there is space or where they can fulfill the financial interests of the state. It is time for North Dakota and states around the country to prioritize the needs of incarcerated women and develop their correctional
systems accordingly.

In order to reform our women's system, the DOCR has spent time exploring the backgrounds and needs of our female population, which differ from our male population in important ways.

Meeting the needs of our women require offering new programming, changing the cultural and disciplinary practices of staff, and finally, building a new gender-responsive facility in a more central part of the state.

We've begun making some of these changes and are working with other state actors to implement the rest in the coming months and years.

I will focus on several major considerations in developing our women's program. Women are less likely to be convicted of violent crimes. They are often engaging in criminal activity due to substance abuse and/or poverty. Many have not received a high school degree or GED.

In order to facilitate rehabilitation and reduce recidivism rates among women, we must offer programming that addresses the root cause of their criminal involvement. In particular, women must have access to substance abuse programming.
They should reap financial aid, money management training, housing and legal assistance to help combat poverty. They should also have access to GED classes, as well as vocational training. And they must have the opportunity to participate in work release to help prepare them for jobs in the community. Ultimately, altering the circumstances that lead women to commit crimes will help ensure success upon release.

About 75 percent of the women in North Dakota are mothers. Many have young children. And they are often the primary caretakers before they're incarcerated. Given the high percentage of mothers and particularly mothers of young children, our women's program must focus on creating and maintaining healthy family relationships.

Family reunification should occur as frequently as possible. And the DOCR needs to provide spaces and events that are family friendly.

Women incarcerated in North Dakota have medical needs that differ from the male population. They have a higher rate of diabetes, a higher rate of hepatitis C. And approximately ten percent are
pregnant when they enter prison.

Our women recently -- I won't go into some of the examples of that. But one of the things I would also point out is that about 34 percent of our female population is Native American. That's our largest minority population in North Dakota.

And despite Native Americans composing just under five percent of the population, we have that high percentage incarcerated in our system. Native American women have specific family, cultural, spiritual, and criminogenic needs that the DOCR must provide.

Currently, the women's facility is far from most of the reservations in the state, as well as the cultural services provided in major cities. Moving to a more central location closer to both the reservations and these services will allow the DOCR to provide for Native American women in custody.

Ultimately, we have begun implementing many of these changes. But there is still a lot of work to do.

We are grateful for the national
conversation around the needs of incarcerated 
women. And we hope that a few years from now the 
women's system in our state and in states across 
the country will be better suited to meet the needs 
of the population they are meant to serve.

Thank you for the opportunity to 
testify today.

CHAIR LHAMON: Thank you very much.

Ms. Pupovac?

MS. PUPOVAC: Hello. Thank you for 
this opportunity to address the Commission.

My name is Jessica Pupovac. And I was 
the lead reporter on a year-long investigation that 
aired on NPR and was published in the Chicago 
Reporter last fall.

My colleagues and I obtained data from 
13 state prison systems, visited women's prisons in 
4 states, and interviewed dozens of current and 
formerly incarcerated women, academics, and 
corrections staff.

We found that in prisons across the 
country women receive a disproportionate number of 
disciplinary tickets for low level offenses, things 
like being disruptive and disrespectful.
For example, in Indiana, women had more than double the rate of tickets than men overall and three times as many tickets for refusing to obey an order. In Vermont, female inmates are three times as likely to get a ticket for, quote, making a derogatory comment. And in California, women were two and a half times as likely to be ticketed for, quote, disrespecting an officer.

Many individual and structural factors might, of course, contribute to this. But experts we talked to pointed time and again to the unique backgrounds of incarcerated women, particularly their histories of trauma and the failure of correctional institutions to adopt responsive policies, practices, and training.

Other panelists today have addressed this subject. So I'll just share one striking data point. Women behind bars in the U.S. have a higher incidence of PTSD than any other studied demographic including combat veterans.

Meanwhile, common aspects of prison life, things like strip searches, verbal abuse, restraints, and isolation, can and often do exacerbate trauma's lingering effects. One woman
we interviewed talked about seeing and hearing past abusers in the voices and faces of correctional officers.

Experts told us that many female inmates react to these situations in a way that might be natural for trauma survivors. They try to leave the situation. They might talk back or they might attempt to exert some kind of control. And it's precisely these actions that in a prison environment often get them into trouble.

Alyssa Benedict, founder of Core Associates, who will be testifying during the public comment session, told us that, quote, women right now are being punished for coping with their trauma by a workforce that doesn't understand them.

Across the country we found very little comprehensive training taking place in state prisons on effectively working with female inmates in a way that deescalates conflict and might avoid triggering past trauma.

Meanwhile, in the absence of such training, one former warden in a women's prison in Illinois told us that these punitive responses and what she called power struggles that ensue do not
make prisons safer. Quote, we discipline based on emotion rather than safety and security, she told us.

But although there seem to be widespread anecdotal awareness of this tendency, many states are not documenting it.

We requested internal reports and disciplinary data from 26 states. Eleven of those states did not provide us with any information. They claimed they don't track discipline in a central location and that preparing the data would have been overly burdensome. So, in other words, nearly half of the states in our sample do not know whether they are disciplining women disproportionately.

Of the states that did provide responsive data, 13 of the 15 disciplined women at higher rates for many lower level offenses.

Most states provided data on the number of infractions and the punishment for those infractions separately. However, the few that provided longitudinal data showed women often being punished more harshly than men for these low level offenses.
For example, women in Rhode Island were more than three times as likely to be placed in restrictive housing for an offense called simply disobedience.

In some states, although women had lower incidences of violent or major infractions in prison, they still received more severe punishments overall.

In Idaho, women were more likely to be put in physical restraints. In California, they were more likely to have their phone privileges revoked. And in Missouri, although women only received a quarter of the higher level violations, they comprised more than two-thirds of the total inmate population in disciplinary segregation.

These violations have real consequences, not just for women but for their families. Punishments for these low level infractions result in more time served through the revocation of good conduct credits, less access to the phone, revocation of privileges like contact visits, and as many women told us, a deep sense of failure, and in some cases, retraumatization.

As you've heard here today, officials
across the country have begun to recognize the important differences between men and women in prison. They're adjusting needs assessments, case management protocols, and substance abuse treatments accordingly.

But ultimately, while many Departments of Corrections have added gender responsiveness to their vocabulary, comprehensive training on working with female inmates and victims of past trauma remains the exception not the norm.

And crucially, as our data show, most if not all of these efforts have yet to change the disparity in how women behind bars are disciplined.

Resources do exist. The National Resource Center for Justice-Involved Women has recently published a comprehensive guide meant to assist corrections professionals in revising their approach to discipline and sanctions.

And several states we spoke with mentioned at least one official attending some type of gender-responsive and trauma-informed training at the National Institute of Corrections.

We also asked almost every person we interviewed whether more female officers and women
in positions of leadership might help change corrections culture. Our data show that correctional officers are disproportionately white and disproportionately male even at female institutions.

However, every person we asked, from former inmates to current wardens, told us that hiring more women won't necessarily solve the problem. What's needed is more accountability, more training, and systemic change.

Still, some women in positions of power are doing what they can to help drive that change. Warden Sheryl Dahm at the Iowa Correctional Institution for Women recently began training every new cadet in gender-responsive and trauma-informed approaches.

She's also actively modeling best practices and discussing every disciplinary ticket with the individual officer who wrote it to see if there may have been a better way to address problems through a gender-responsive and trauma-informed lens.

The goal, says Dahm, is to make prison a place where women feel safe and supported so that
they can develop the skills to both resolve conflicts and heal from past trauma.

She told us that ultimately she isn't as interested in compliance with prison rules as she is in building women up, in her words, to be stronger, more capable mothers, women, and citizens upon their release. Thank you.

CHAIR LHAMON: Thank you very much.

Dr. Williams?

DR. WILLIAMS: Madam Chair, Commissioners, distinguished colleagues, thank you for allowing me to join you today to discuss the treatment of women in prison.

My name is Wendy Williams. And I have the honor and privilege to serve as the Deputy Commissioner for Women's Services for the Alabama Department of Corrections.

Beginning in April of 2014, the Department began to transform correctional policies and practices impacting women offenders and their families, staff, and communities. Micro and macro level changes have been accomplished and were essential in building and sustaining gender-responsive and trauma-informed practices in the
three female facilities.

Numerous factors have contributed to the progress that has been made in Alabama, but none more important than the specific steps taken with the women, staff, and stakeholders to reform the culture.

Using evidence-based principles, Alabama's major women's prison, Julia Tutwiler Prison for Women, has developed into a model women's correctional facility.

The guiding framework for the monumental changes accomplished by the department was the women's services strategic plan, a collaborative effort involving many agency stakeholders and national experts, including consultant advisors.

The women's services strategic plan was designed to fit into and complement the larger agency strategic plan through a shared vision of promoting positive outcomes for the staff and the offenders under the department's supervision.

Developing and implementing gender-responsive leadership, a gender-responsive leadership philosophy was essential to creating a
culture of safety. Women's services has established a leadership structure that supports the implementation and sustainment of practices that reflect women's pathways to criminality.

Leadership strategies involve the offenders, as well as staff, anchored in a strong organizational support structure with an executive level leadership position specific to women's services.

Most correctional agency policy manuals focus on guidelines specific to the male offender population, which has been stated here several times today. However, operational practices in women's facilities should reflect the differences between men and women and inform policies that provide guidance to staff in their daily interactions with the population.

Tutwiler now has over 60 standard operating procedures that are gender-responsive and trauma-informed, all of which promote a culture of safety. These policies are the framework for staff training to provide education on the knowledge and skills necessary to consistently provide culturally competent interpersonal interactions.
The training also provides guidance for staff on respectful communication with all offenders. Accommodating gender and cultural differences into institutional operations allows for a climate of respect.

Multiple offender surveys conducted between 2016 and 2018 at Tutwiler revealed an average of 85 percent of the offenders reporting that they feel sexually safe. Our goal is 100 percent.

One of the first policy changes that was implemented in October of 2014 was unlimited access to personal hygiene items for the women. Stored neatly in cabinets in all bathroom areas, the women have unimpeded access to feminine hygiene items and other toiletry items at any time. They do not have to request these items from staff. They simply access them in the bathroom areas as needed.

This may sound like a minor change. But this policy alone began a cultural shift in operational practices in the department's women's facilities.

One of the more important policies
impacting women offenders is the discipline and sanctions policy.

In collaboration with consultant advisors and the National Resource Center for Justice-Involved Women, the department implemented the women's services behavior intervention and discipline policy on January 1, 2018. This policy is strength-based and encourages staff to model a culture of encouragement and self-awareness.

Prior to the development of this new and innovative policy, Tutwiler was initiating well over 600 major disciplinary actions or tickets a year with an average population of only 850 women. In 2018, after implementing the new policy, Tutwiler initiated only 316 major disciplinaries, nearly half the amount from the previous year.

The new policy has also reduced the use of restrictive housing to those behaviors that, or where inmates exhibit violence against other inmates or staff. The average stay for an offender who was sanctioned for restrictive housing in 2018 was only nine days. And as mentioned earlier here today, there's many occasions where we have no women in restrictive housing.
We expect to see a continued decline in major disciplinary actions and the use of restrictive housing as this new policy matures.

Facilitating successful reentry for women offenders is part of the mission of women's services and another goal of the strategic plan. At Tutwiler, reentry begins at intake. Women are interviewed using the Women's Risk Needs Assessment, an assessment designed to inform the risk and needs of women offenders.

Before implementing the WRNA, using a risk assessment designed for male offenders, the custody of women offenders in the department reflected at least 30 percent of the population in moderate to high risk and 47 percent of the women in low risk.

As of November 1, 2018, after two years of implementing the WRNA, only 20 percent of the women offenders in the department are in moderate to high risk and over 70 percent are in low risk.

This custody breakdown more accurately portrays the female offender population and the potential risk they may or may not pose to the institutional security and public safety.
To my knowledge, the department is the only state correctional agency using WRNA to inform needs and risk of women offenders.

Once the WRNA assessment is completed, the offenders are matched with a social service caseworker to guide the women through the enrollment process for recommended programming. The department has implemented seven evidence-based programs, women-specific programs that are proven to impact the lives of women offenders.

These programs address the needs identified with the WRNA as they relate to the pathways of the women. These program categories include reentry, substance abuse, emotional regulation, trauma, parenting, healthy relationships, and cognitive behavioral programs for the moderate to high risk offenders.

In March 2013, the department partnered with the Alabama Prison Birth Project, a non-profit organization created to bring support services to pregnant women inside Tutwiler.

These community partners provide dual services to the pregnant women, as well as the Mother's Milk Initiative. The department created a
lactation room at Tutwiler for mothers to pump their breast milk and have it delivered to their newborn babies.

Programs such as this strengthen family connections during incarceration to assist with building supportive relationships once the women are released.

I will close in my last few seconds by saying that without some of the federal assistance that was available to Alabama through the National Institute of Corrections, the PREA Resource Center, and other organizations as such some of these changes would not have been possible.

Thank you for your time today.

CHAIR LHAMON: Thank you very much. I'll open it up for questions from my fellow Commissioners. I understand Commissioner Yaki has a question.

COMMISSIONER YAKI: Thank you, Chair. And a point of personal privilege, I just wanted to recognize Professor Resnik's husband, Dennis Curtis, who actually started the clinical program at Yale that enabled me to have a fun time suing the Connecticut prison system on medical
conditions.

So, Professor Resnik, just on the First Step program, it is just a first step. What are you looking for and what, how can we help in putting information out there or recommendations on how to operationalize it so that it's more than just a statute that sits there but actually has life to it? Because obviously one of the things you want to do is take this and with other models that are out there in the states and expand it nationwide to the larger prison system that's in the state prisons, as in the state incarceration pipeline.

MS. RESNIK: Now it's on. Thank you. The exchange before lunch was about implementation. The panel has all spoken about how to take words on pages and translate them into action on the ground.

The second step for the Congress is to enact and for, with great bipartisan support, decent, humane treatment for people who are incarcerated and to provide for ways to incarcerate fewer people.

Given the current statute, the first on the first steps is implementation. Ask the Federal
Bureau of Prisons for data informed by gender, race, and ethnicity and other forms of identity about who is getting what under the [First Step] Act. I had the privilege of being in Alabama last month in prison; I looked at an open cabinet to which I was taken in the bath areas for women prisoners at Tutwiler, and anybody can reach into the cabinet and take what they need.

Is that true in all the 29 facilities for women? And how can we move both in the public and the contract facilities (the private sector that was also mentioned here), we need to look at them and ask: where's the open cabinet and how can women get these items?

Who is monitoring? You saw astonishing health experts who have testified here. Let them be the individuals doing ad hoc inspections to ask about how healthcare is being provided.

In terms of the education and vocation that's called for in that Act and for sentence reduction, how is it playing out?

In terms of second steps, I just wanted to mention that Connecticut has just passed a statute recently called Fair Treatment of
Incarcerated Persons, which is to address some of the gender inequalities we've seen.

And the U.N. has what are called the Bangkok Principles, which are 2010 rules governing that are also addressing the rules of women who are in the detention systems. All of these are models that are available, federal and state legislation.

Most importantly I think, as I am deeply committed to a federalism model which understands the important role of states and territories as well and Indian tribal nations and their courts, would be to think about what kind of infrastructure could be put into place so that a group like this meets once a year or more to take the temperature of what's happening on the ground.

One model is the State Justice Institute. You've heard of others. How could there be joint work, state and federal and tribal, that would change the way people are being treated in prison, as well as helping people to get out?

CHAIR LHAMON: Commissioner Kladney?

COMMISSIONER KLADNEY: Thank you, Madam Chair. Ms. Pupovac, is your reporting -- as I understand it, there's more to come or you're doing
something else?

    MS. PUPOVAC: Potentially there might be more to come. But there's nothing planned right now. We did release --

    CHAIR LHAMON: It depends on how it goes today, right?

    MS. PUPOVAC: I'm sorry?

    CHAIR LHAMON: It depends on how it goes today, right?

    MS. PUPOVAC: Yeah, exactly. We'll see. And how many public records requests still get answered. Apparently, there's data I've heard here today that was apparently not available when we requested it.

    But we have released all of the data that we obtained publicly in the last month for any researchers or anyone who might be interested in probing it further.

    COMMISSIONER KLADNEY: Thank you. Ms. Bertsch?

    MS. BERTSCH: Bertsch.

    COMMISSIONER KLADNEY: Bertsch. I was wondering. Has anybody done any studies as to why your population on Native Americans is so high? I
mean, are they being sentenced equally with other - -

MS. BERTSCH: You know, that's a great question. So, in our total population, so the men make up about, we have about 23 percent of our population are Native American men.

Oftentimes the Department of Corrections, when there's not services available in the community and our tribal communities have some of the largest pockets of poverty, they often look at the Department of Corrections as like the pseudo Department of Human Services.

So, if they don't get treatment in their area, if there's not treatment for drug and alcohol abuse or mental health services, they actually sentence them to the Department of Corrections under a crime.

And so 70 percent of our district court judges in a study when we were doing justice reinvestment indicated they had sentenced low risk, non-violent people to the Department of Corrections and Rehabilitation just to access services.

So, if you have a population that comes from an area that there's limited services, it goes
to say that it's very --

COMMISSIONER Kladney: It's a heck of a solution.

Ms. Bertsch: -- obvious. It's not a great solution, not at all.

COMMISSIONER Kladney: So also for Ms. Bertsch and Ms. Williams, how can you tell the discipline you're handing out is fair? How do you determine that?

Ms. Bertsch: So that's a great question. We actually review all the disciplinary reports that are written across the department. And there's a review at the prison level, but then also at our central office level.

And for the last several years, probably since 2010, in addition, write-ups aren't just negative. They're positive.

So we actually do positive behavior reports to try to catch people doing the right thing. And we strive for a four-to-one ratio, four positives to every negative.

So that's actually built into our system. And we track that every month to see how we're doing as far as we will actually want to
write people up for doing the right thing because it's actually more successful than beating them over a head catching them doing the wrong thing.

So we track that very closely. And the more positive behavior reports that we've written, you can actually just target people with positive reinforcement and really reduce bad behavior. So we track it very close.

COMMISSIONER KLADNEY: Ms. Williams?

DR. WILLIAMS: Yes, sir. We utilize several different methods to get feedback from the offender population.

First of all, I want to acknowledge that we actually involved the women in the creation of our new policy. We had focus groups and things of that nature to get feedback from them, because they also want to live in a safe place.

So hearing from them was important. And then having a role in the development of that policy I think was critical.

But we also have opportunities weekly for the women to share their inputs on different things. And they will definitely share their opinion on things. So I think it's important to
listen to them.

You know, our policy is still new. It's a little over a year now. We've made some revisions to it. Some of those revisions were made based on recommendations from the women as well as the staff.

So I think for us that's what's been important is everyone having a voice in it and being willing to make changes if necessary, if they were needed.

COMMISSIONER Kladney: Ms. Thompson-El, my question is, and I asked this this morning as well, would it benefit the Commission, say, if we went and visited Hazelton?

Ms. Thompson-El: Definitely. I think that, first of all, it would benefit the women there to know that you great men and women care enough to come in and visit them.

For some of them they haven't been able to get visits from their family or their local legislators. So I think it would, first of all, show them that the nation is paying attention, because a lot of them feel like their issues aren't being heard. So I definitely believe it will be
helpful for the women.

   And obviously, you would learn. It would be a life-changing experience just to be able to meet the women where they are and get to know them and maybe have some sort of restorative dialogue and allow them to -- allow the Commissioners to hear from them and exchange information, definitely.

   COMMISSIONER KLADNEY: Thank you very much.

   CHAIR LHAMON: Commissioner Kirsanow?

   COMMISSIONER KIRSANOW: Thanks, Madam Chair, and thanks to the witnesses for the information.

   I have a few questions again, numbers. And it may be in some of your written material. But I may have missed it.

   I'm interested in recidivism rates. And I was really interested and, Professor Resnik, you've got a lot of great data. But I'm not sure if I missed any of this data.

   Does anybody have any data, anybody on the panel who has data with respect to recidivism rates for female prisoners who may have been, I
think you used the term ticketed versus those who haven't been ticketed? Is there any data along those lines? Does anyone know?

DR. WILLIAMS: I don't have any data specific to those characteristics. But I can share in Alabama the recidivism rate for women is usually five percent lower than it is for the male population. Our recidivism rate for men is around 31, 32 percent. The recidivism rate for women is around 25, 26 percent.

We are still new into our change process. We've just implemented these programs, these new evidence-based programs last year. We just implemented the new discipline policy last year. So we expect to have some data in the next couple years that will actually tell us whether or not it's having a reduction in recidivism.

We're also in the process of validating the WRNA instrument in Alabama. The University of Alabama and Auburn University have partnered to do the validation study. So, in three to four years, we'll have some really good data on WRNA as it's used to both predict risk and needs.

MS. RESNIK: In terms of raising
concerns about safety and community and well-being, our focus in the ASCA-Liman reports has been on restrictive housing. In one of our reports, we learned from just 30 jurisdictions that more than 4,000 people were released from profound isolation to the streets. So, as far as the safety of all human beings is concerned, no one I know thinks this is a good idea.

In terms of safety and transitions, central to protecting against recidivism, one need is to ensure that people are being helped in prison to be interactive, responsible persons. Another need comes from the prior panel about healthcare: is there a continuity of care in terms of the forms of medication people are getting in prison once they're out of prison?

And then in terms of the sad stories about the lack of support services in healthcare and social services in areas of poverty and elsewhere in the United States is, what are the resources available?

So the reentry panel, which I know is coming, is key to non-recidivism. One of the keys is the ability to function while you're
incarcerated and that can improve individuals’ ability to function when they get out.

A substantial amount of research done by corrections people shows that if you're visited while you're in prison, you do better while you're in prison and you do better once you're out. This comes back to your point from this morning about how far away people are from their households and how difficult it is to visit them.

There's this interaction between time and resources and visiting hours in facilities, which is the understaffing issue that we hear so much from corrections. One other concern that wasn't as clear as it needed to be in discussions on the federal system from this morning is the profound understaffing of these facilities.

And while we all want to be “smart on crime” and “right on crime” in terms of reducing the costs, ensuring safety, and helping people, if we put people in settings where there are too few staff members and they are inadequately trained, the staff is both hyper-stressed and unresponsive; these are some of the reasons why prison systems say there can't be more visiting, there can't be
more programs, they can't do more because they
don't have staff.

The integration of security into our
discussions is central. Security and sufficient
staff with resources and knowledge and training and
decent pay will help reduce those recidivism rates.

COMMISSIONER KIRSANOW: Yeah, and I'm
interested if anybody has any data, and you can
supply it later. It doesn't have to be right now.

But the rates of recidivism based on,
or compared between males and females, between
those who have been in restrictive confinement or
in restrictive housing versus those who have not,
those who are, for example, within a 500-mile
radius of home and those who are not, I'd kind of
like to get an idea for what are the impacts on
those types of conditions on recidivism, and also,
one other one, recidivism rates based on protected
class, whether it be race, any other type of
protected characteristic. Thank you.

CHAIR LHAMON: Commissioner Heriot?

COMMISSIONER HERIOT: I think I have a
suggestion. And maybe this has already been done.
But a couple of people have mentioned this notion
that prisoners who get visitors do better when they get out than prisoners who haven't had visitors.

And the problem with that is you don't know whether the causation runs one way or the other. It may be that the sort of person that nobody wants to visit is the sort of person that doesn't do very well when they get out.

So what you could do to test that is to look at the population of prisoners whose home is very far away, because the reason they're not getting visited is going to be disproportionate because it's hard to, it's hard for the people to get to them, and compare that to the population who are very close to their families. And if the family isn't coming, it could signal something that's different from what, you know, from what you're thinking, and compare the gap in those two. And I think that would be useful research.

CHAIR LHAMON: Commissioner Narasaki?

COMMISSIONER NARASAKI: Thank you. So I'm very focused on what are the recommendations that we could make that would actually be useful.

And we've heard a lot about, you know, the federal system and what they're trying to do
and the fact that the feds generally can't tell the states what to do.

So what are the carrots and sticks that you would recommend that we should recommend that could be put in place to encourage states to give up shackling pregnant women, for example, and the many things that you all feel from the research that has been done should be changed?

I mean, are there carrots and sticks already in place but there's just not enough money or are there some carrots that should be created?

MS. BERTSCH: I'll take a stab at this. Having just come off being the president of the Association of State Correctional Administrators, we've talked a lot about how there's really no national standards for prison systems. It's very, very piecemeal.

So you have pockets of standards, like Prison Rape Elimination Act. But for standards that are much broader that really get to the conditions of confinement, oftentimes those standards come about from a court case, which is really an ineffective way to get at running really good correctional systems.
At some point, I think we looked at the European system to see what they're doing. And it's very different, because we have 50 states.

So one of the ideas is to almost have a system like the Interstate Compact for Adult Offender Supervision where you have a compact and you have some national standards. And there's some agreement and some consistency.

But there really is no oversight for prisons in the United States. I mean, we have the PREA audits. But there's no real teeth or enforcement mechanism for that.

So they tried to I think get people to go along with it by saying we'll take your federal funds away. There's not a lot of federal funds that go into state prison systems. So that wasn't a huge, big carrot or a stick.

So I think, you know, some sort of national standards that everyone would aspire to I think would be a good roadmap for policy makers, because each state corrections system is really at the mercy or at their state legislature to adequately fund and recognize what they should do to run a good corrections system.
COMMISSIONER NARASAKI: We've had a
couple of witnesses today suggest that perhaps
there needs to be an interagency task force and/or
some independent agency or commission. What would
that look like? Who would be on it? What would
they be doing?

MS. RESNIK: I'm sure I'm one of many
of the people who can be responding to this.

First off, there is an infrastructure
that exists through the Association of State
Correctional Administrators that meets twice a
year. The heads of all the corrections systems
come together. They often meet with others who do
research with them and work as partners with them.

In terms of a structure, the federal
system has, in some eras, been at the forefront.
But we can see that there are many states that are
far ahead.

Colorado has now said no one can be in
solitary confinement, for 15 days, 22 hours or
more. That's it for the whole system. So we have
an example from Colorado and from North Dakota of
everseous state leadership in terms of solidarity
confinement.
You'd want state, federal, Indian tribes, the polities that are in the United States, to come together with federal funding to create a commission. It might be modeled after the U.S. Commission on Civil Rights, for example, to bring together and include the people who've been incarcerated, as well as the people who are staffing prisons, and those who have come today who do research on or who represent prisoners, to focus on what prisons should look like.

I should just add, you know, prisons were invented to respond to the idea that killing people, branding them, and sending them to the colonies were bad ideas. As soon as prisons were invented in the 1600s, 1700s, people said, oh my god, look at how horrible prisons are.

Chaining, whipping, and starving were practices and not only in the 1600s. That was whipping in Arkansas in 1965, and federal judges held in 1965 and in 1967 that doing so was all right, as long as you have some procedural process was provided. In 1968, Judge Harry Blackmun (then sitting on the Court of Appeals for the Eighth Circuit) held that human decency doesn't let a
prison system whip anymore, and the corrections people agreed.

Thinking that what we have in prisons today is just “normal” is a problem because what prison is today comes from what has been built out of terribly totalitarian regimes before the world of rights to which you're all devoted. So the question is now that we have rights, how do we remake the thing that we call prison, as well as reduce its use.

COMMISSIONER NARASAKI: So I have one more --

CHAIR LHAMON: One more.

COMMISSIONER NARASAKI: Okay. So I did raise the issue earlier about what do we do about the fact that, at least in the federal system, there's only 20-something places.

And the response I got back, understandably is, well, we don't want to have more places. We want alternative sentences. We want to, you know, reduce the population. And I get that. But the reality is some people are going to be in jail, and that's a problem.

Do any of you have suggestions about
what to do about that challenge in terms of not even being able to live up to the standard of 500 miles much less anything less than that?

MS. THOMPSON-EL: I just wanted to speak to the idea of restorative justice and alternatives to incarceration for women, especially women who are the primary caregiver of minor children, services that include substance abuse treatment and trauma treatment.

MS. RESNIK: I think you could say if there was a provision, it could be policy, it doesn't have to be statutes, that you can't put someone more than 50-75 miles away. Then the question is, either don't incarcerate them or find a facility that you believe is safe and gender-responsive in which you can put them. The question would be, where can you put someone? You really can't send them far away.

COMMISSIONER NARASAKI: Thank you.

CHAIR LHAMON: Commissioner Adegbile?

COMMISSIONER ADEGBILE: Yes, hello. Dr. Williams, I'd like to focus for a second on some of the work you've been sharing with us out of Alabama.
And there's been a bit of a discussion about the relative contribution of carrots and sticks to leading to reform and change in the correctional environments.

And so I'm interested in hearing your views about the relative contribution of these two things to the work that's underway in Alabama.

And then noting that you have acknowledged that some of the new policies that are looking good and are encouraging under your supervision are sort of early, and so they don't have a lot of data behind them, I nevertheless want your reflections on how the experience that you're having, including the process of change, could be brought to other institutions.

What are the prerequisites? One of the things I heard from you was leadership. But what are the prerequisites for creating change? And how does that all sort of fit together in this soup? A lot in there, but whatever you can share with us would be appreciated.

DR. WILLIAMS: Okay.

Well, to your first question about the carrots and sticks, there's already a large body of research available through the National Institute of
Corrections and other organizations as such. But because of some of the resource streams being decreased to some of those institutions in the last few years, some of that research has sort of stalled and it's not continuing.

So, I think having access as a state corrections administrator, having access to research that's already been conducted that you can draw upon, and certainly more recent research, I think that's helpful. Also, technical assistance through organizations such as the PREA Resource Center and the National Institute of Corrections, we've utilized a lot of those resources. They're not as available now as they were. So, I know for some states that that's probably an impediment to getting the funding.

Because, as Director Bertsch, with state legislators allocating the budgeted funds for state corrections agencies, you pretty much get what you get, and it's rarely enough to actually operate and provide the sorts of innovative changes that we're talking about.

As referenced earlier before lunch, litigation often helps with that, and the investigation at Tutwiler certainly opened up some
revenue streams for Alabama through the State Legislature. Had that not happened, we wouldn't have our state-of-the-art video surveillance system; we wouldn't have a lot of the other renovations that we've made and are currently making.

So, I think those carrots and sticks are very important. There just doesn't seem to be a lot of availability of those any longer. And I think that's unfortunate for states like Alabama that don't have the resources to actually support those.

Remind me of what your second question was.

COMMISSIONER ADEGBILE: Yes. So, I guess the next piece was just, based on that experience, how does one think about rolling it out to other places, right?

DR. WILLIAMS: Right.

COMMISSIONER ADEGBILE: What are the ingredients of beginning to have change and what contribution does leadership make --

DR. WILLIAMS: Right.

COMMISSIONER ADEGBILE: -- whether it's come from a stick or a carrot or a prayer, or
anything else?

DR. WILLIAMS: Right.

COMMISSIONER ADEGBILE: I think one of the things we've heard today is that we need change in this area; we need more focus.

DR. WILLIAMS: Right.

COMMISSIONER ADEGBILE: We need a gender-focus, a trauma-focus. We've heard all of that.

And so, there are people out there that want to do the best they can. How do we help them to be successful? How do we have more examples of what's going on under your supervision that we can roll out other places, right? You build it little by little at least.

DR. WILLIAMS: Right. All of the above pretty much, to sum it up. But it starts with leadership. You've got to have the leadership structure in place that can make sure that the changes are made, because you're going to have opposition internally.

I mean, that happened in Alabama. We were rolling out these innovative changes in the women's facilities, and even some of our own stakeholders internally were poking and prodding at
times, trying to almost set us back.

So, you've got to have key leadership in place to support the change. The agency has to be transparent. You've got to own whatever issues that are there in order to get beyond them. And that's hard sometimes for corrections agencies. It really is. But, once you do it, it's like a 200-pound weight off of your shoulders.

So, that would probably be the two lead things I would say, is leadership, transparency, and then, you have to do ongoing, as Jessica and I were talking about before we started, ongoing staff education and offender education. You can't do a one-and-done with changes like this. If you're going to shift a culture, it has to be ongoing.

I heard someone mention earlier today tying your strategic plan to the appraisal and performance measures for staff. It has to be intentional at every point that you can, as an administrator, to make sure staff are constantly being reminded of how important their actions are day to day, boots on the ground, with the mission of the Department or for women's services.

And it takes time. I mean, there's no "mission accomplished" sign hanging anywhere. We
are still in the trenches working hard, and we're just glad to be where we are. But it takes patience, it takes commitment, and it will take some resource streams. That shouldn't be the reason not to do it, but it certainly makes it a lot easier.

CHAIR LHAMON: You just turned off your microphone.

COMMISSIONER ADEGBILE: Oh, sorry. I have a big enough mouth that, typically, it doesn't matter, but since we're broadcasting, I'll play by the rules.

So, I wanted to come up on this conversation and ask you a little bit about how we think about the idea or what narratives there are out there about how reform makes things better, both for the people that are incarcerated, but also lifts the weight or the burden of the people that are involved in the system. Meaning, there could be a narrative that's a win/win. I think if we have people that are entrenched and thinking that the way we do it is the only way to do it, it's a stressful place being in prison, regardless of what side of the bars you're on. I'm not equating the two, but I imagine and I understand that it can be
stressful to work in prisons for everybody, for lots of reasons.

And what is the narrative of recognizing the humanity of the people who are there, 95 percent of whom are coming out, and on the other side, alleviating this situation, that it’s a zero-sum game where somebody wins and somebody loses? How do we drive that narrative?

MS. BERTSCH: Yes, we’ve been trying to drive that narrative for the last few years in North Dakota. And really, it comes down to creating an environment where the intervention works. The people who work in prisons have a vested stake in having an environment that is safe, that creates an environment where change can occur. But I can tell you that’s a culture shift, just like Dr. Williams talked about. And often times, I think systems get so entrenched because this is the way we’ve always done it. And sometimes you can’t even imagine a system different than what you’re already running until you see something so drastically different.

And so, having had the opportunity to see a very progressive system in Norway, and trying to bring those things back, it’s been really
gratifying, but it's also been challenging. Because the narrative, if you don't control it, is soft on crime; you're coddling; what's all this about? And we really talk about public safety in the sense that, how do you want this person returning? Do you want to make a good prisoner or do you want to make a good neighbor?

And so, as we've been in this several years, you're going to lose some staff, and some of them need to go, if they can't get onboard. And then, the way you actually recruit and hire, and who you need to actually come and work in your environments, has to change. And the biggest thing to sustain these cultural changes is actually how you train and coach and mentor your staff to make sure that it continues. Because if the leadership you have in the present is all of a sudden gone, you hate to see any gains disappear because you have not entrenched some of those gains in place.

So, there's a huge incentive that what we do in our prisons isn't just about being nice to the people while they're incarcerated. It translates into public safety to their families, to the communities that they're returning. It touches every part of our community. And if we're doing
something that's harming people while they're incarcerated, that ripple effect will impact the communities to which they return.

COMMISSIONER ADEGBILE: That's helpful.

One last one, for anybody on the panel that wants to speak to it. We've spoken a little bit about disparities that reflect some differences with protected classes. I'm wondering if there are some sorts -- we've talked about cultural fit. We've talked a little bit about a difference between the race of some of the correction officials and the incarcerated persons. But I just want to put the question out here. Are there areas of discrimination that we need to know about in the prison system or the U.S. Civil Rights Commission? There are protected classes of people that are incarcerated. Are there issues that we need to pay special attention to that are affecting different protected classes?

MS. PUPOVAC: I mean, I would say that absolutely, particularly in terms of the women who are incarcerated. It appears, and I think it's been documented -- in doing this research, we only found two academic studies, one done in the 1960s on disciplinary data in the '60s in a women's and
men's prison, and then, one done in a Texas jail system in the '80s. And both of those found the same kind of overpolicing of women's behavior that we found in our data.

So, it seems that there are, even though we now talk about a gender-responsive and trauma-informed lens, it seems that there's always been a different set of standards for female and male inmates, and it's just been that women's behavior is overly penalized.

MS. RESNIK: We have clear information on the use of restrictive housing that ASCA and Liman produced in the fall of 2017. This tells us that women of color are in restrictive housing in a much higher percentage than they are in the general population.

There's been an echo across this, I mean a consistent point, about the desperate need for research of multivariable phenomenon to try to track down more of the variables. That's also a call for funding and for support, and for access to information. But the information that's out there says we've got a problem here. In the research now available, you've got race and gender doing more work than it should.
MS. PUPOVAC: And I would add to that women with mental health problems. They're highly, vastly overrepresented in all of these groups.

COMMISSIONER ADEGBILE: Thank you.

CHAIR LHAMON: Dr. Williams, the point that Professor Resnik raised about the open cabinet that's now available and people can reach into is, on the one hand, real exciting to hear about and, also sort of counterintuitive to imagine that that kind of access could be available and also fiscally responsible for your institution.

And I wonder if there's a way to share that information with other institutions, maybe with the organization you just finished chairing, so that other institutions also could begin to learn from that best practice, maybe short of litigation, as a way of moving more quickly. And if there are other lessons similar to that open cabinet that are analogous, also, maybe we could start spreading the word for more institutions. And so, I hoped maybe you could tell us a little bit more about that cabinet and ways to share its progress.

DR. WILLIAMS: Yes. So, we are open to sharing of our gender-responsive, trauma-informed
policies. As I mentioned, there are over 60. One of the first ones was the hygiene item issuance, and we're happy to share that policy. We'll send you pictures of the cabinets, if that's helpful.

CHAIR LHAMON: That would be great. Thank you.

DR. WILLIAMS: They're really inexpensive to create. They're just Rubbermaid cabinets that you pick up at Walmart or Lowe's, or somewhere like that. But we would love to share the policies that we have developed.

Probably -- and I started to put it into my oral remarks, but I knew I was already running close on time -- the second policy change that we made was the hair and how women were allowed to wear their hair. Because, traditionally, they could not wear it any longer than their shoulder length, and it had to be this and that, and whatever. Now they can grow their hair as long as they want. We don't care. They can wear dreadlocks. They can do whatever they want, as long as they will submit to searches, when that's necessary, if there's any concerns about contraband, or whatever.

But those, to me, are just the very
basic things that have an impact on how a woman feels about herself, her hair, and how she presents. And giving them that flexibility to decide how they want to do their hair was amazing, just the difference in the women and how they walk around the facility now. So, that's probably one of the more important ones.

And then, also, our use of restrictive housing. It was a three-to-four-year process that got us to where we are now. We started with limiting the amount of time that a woman can stay in prehearing segregation, which is when they've demonstrated some type of behavior that would result in a disciplinary report and the staff feels that they needed to be separated from the population. They would put them in that unit, and sometimes they would sit there for 10 days just waiting for their hearing.

Now, if that hearing is not conducted within 72 hours, we have to release them. And so, there's certainty there. The women know what to expect, and they also know that they'll get credit for those 72 hours or 48 hours, or however long they were there, onto that 9- to 10-day stent that they have to do, time served, so to speak. So,
they get out a little bit early.

I didn't mention it, but in our discipline process there's also positive reinforcement aspects to that. And letting some of the women who have attended the programs, the evidence-based programs that we have in place now, that have also had a past history of having some self-regulation issues, letting them take a part in roundtable discussions with some of the women that maybe have received a ticket recently -- it didn't warrant segregation placement necessarily, but maybe they just were trash-talking each other. So, letting them sit at a roundtable, and letting inmates actually facilitate those discussions and talk about their own behaviors and how they can do things differently in the future, how they might prevent something like that from happening.

So, that's just an example of some, but we will share any of the work that we've done. And we already have shared it with a lot of states.

CHAIR LHAMON: Okay. Thank you.

MS. PUPOVAC: Could I add to that also, one of the things that we saw in some places that we visited were -- and I don't know if you are doing this as well -- but kind of a modification of
the traditional strip search, where women can take off one article of clothing or one part of their clothing at a time. So, a woman never has to be completely naked and feel that vulnerability. It seemed to be something that helped mitigate those conflicts that lead to a strip search or that make a woman fight against it.

Another thing, to your point about the data, is that, I'll just say that, as I mentioned, only 13 or 15 of the 26 states provided data to us. Many states that we contacted said that they keep all of this in individual paper files and just had no way of knowing what their trends were and where their problems were. And so, that seems to me to be a good first step, an opportunity to create a little more accountability to just have a system of knowing what's happening and have it, you know, using computers -- (laughter) -- something along those lines to provide that accountability and transparency, and ability to take a deeper dive into who is being affected and what is happening.

Thanks.

MS. RESNIK: This, actually, also relates to the idea that you would have if the director had to sign off on any solitary
confine for more 24 hours, you would both get centralized information and you would have some way. And in some states they're trying to both use either directors or regions to make it harder than just an individual staff member saying a person is a threat.

I just wanted to mention on the personal hygiene, when you go abroad, you often find that prisoners typically wear their own clothes. Staff wears denims or something. And the explanation is, of course, it would be an insult to dignity to have people in these jumpsuits that are marked. And so, the things that we think of as natural here in terms of total constraint, in many other settings, in addition to being constrained, people have access to visiting. There's a whole host of other practices that would be very helpful. So, another institutional notion would be shopping states and shopping other systems to learn about alternatives.

CHAIR LHAMON: Great. Thank you.

Commissioner Kladney?

COMMISSIONER KLADNEY: Thank you, Madam Chair.

Dr. Williams, I was wondering, since
you're sharing so much, can you share those best practices/policies with us, and send a copy, so maybe we'll include them in our report?

    DR. WILLIAMS: I would be happy to do that.

    COMMISSIONER KLANDNEY: Thank you.

    DR. WILLIAMS: Sure.

    COMMISSIONER KLANDNEY: The second thing I noticed was in your statement that I read you talked about the staff changes, 12 hours to eight hours, and there was another one. But I am sure there have been other changes as well. Do they also have focus groups? Do you have focus groups for your staff?

    DR. WILLIAMS: Absolutely. And I think I mentioned in my written statement that, you know, when you have the types and the amount of changes that are visibly taking place that impact the offenders, sometimes staff will become resentful if you're not also taking care of their well-being. So, some of the remarks that the other panel have made, it's very important to include them in the process from the start. We've included them in almost all of the focus groups, if not all, probably all of them.
We also survey our staff routinely to make sure that we are hearing from them, what their views are of the changes that have been made. And we invite them to come forward with ideas that they have about how things -- just like we mentioned the disciplinary policy, and midway through, recognizing that there was changes that would benefit staff and inmates, if they were made. So, we were making those changes.

So, having the type of culture where staff feel valued, No. 1, and that they feel that their ideas are appreciated, and that they are encouraged to bring those ideas forward is important. We have ongoing staff training and education, as I was mentioning to Jessica earlier, and that is equally as important.

Allowing some of our staff to go visit other facilities and draw from what they see there, all of those type things are important. But staff wellness has got to be at the top of the list and making sure that they have what they need, and that they feel safe.

COMMISSIONER KLADNEY: And I think this is for Director Bertsch and Dr. Williams, but anybody else can chime-in, which I'm sure you all
This morning I was asking some questions about the FOQs, and whatever. I don't know if you use the BFOQ or if perhaps you just assign certain people to certain posts in your facility, which would be like a shower post or whatever. Perhaps males can run the sally port or searching, or things like that.

Can you summarize how you function like that, each one of you?

MS. BERTSCH: North Dakota is a right-to-work state, and we assign the best person for the best post. There is no right to a certain post. So, we assign the best-trained person for the post. So, we don't really worry about BFOQs, but we do try to hire -- in the women's prison, we obviously want most of the folks working in the prison to be women. Men, we actually like a good mix of women. So, in our medium-custody facility, we actually have about 40 percent of the correctional officers are women, because they bring a different bent to the environment.

So, we don't really worry about BFOQs because we have the authority to put the best person in the best post.
COMMISSIONER KLADEY: Thank you.

Dr. Williams?

DR. WILLIAMS: Right. We do not necessarily have BFOQs, but we have gender-specific posts. Many of those posts were already declared gender-specific prior to a staffing analysis that we had conducted three years ago, which actually looked at all the different posts and staffing through the lens of being gender-responsive and trauma-informed. And so, there were some additional posts that were added to that list of gender-specific posts through that process. So, I don't know the exact number, but any area of the facility where a woman's privacy is an issue, it's a gender-specific post.

In addition to that -- I just lost my thought as to what I was going to say.

COMMISSIONER KLADEY: That's okay. It happens to me all the time.

(Laughter.)

DR. WILLIAMS: Yes. I'm talking too much, I guess.

COMMISSIONER KLADEY: More every day.

DR. WILLIAMS: I'll think of it in a moment. Oh, I know what it was.
In 2012, which was at the beginning of when the lights started to be cast on Tutwiler, our staffing ratio there was 70 percent male correctional officers to 30 percent female correctional officers. Today, I'm happy to report we have 65 percent female correctional officers and 35 percent male.

And I do think that's critically important. It is good to have a nice blend, but it's important, because of those gender-specific posts, to have the numbers of female officers there to make sure they're staffed with female officers.

COMMISSIONER KLADNEY: Has that led to any more problems in the facility?

DR. WILLIAMS: I wouldn't call them problems, but, clearly, you know, child care is an issue for men and women, if they're single parents for sure, and even if you're not single parents. But a lot of our female staff are single parents. And so, child care is of concern. And that's one of the reasons that we went from 12-hour shifts to 8-hour shifts, because 12 hours is a long time to leave your child in daycare. And so, that's been helpful. But, outside of that, I can't say that there's been any problems or challenges created
because of the difference.

COMMISSIONER KLANDNEY: Thank you.

Professor, do you have an opinion?

CHAIR LHAMON: And we are past time.

So, we will hear the answer and, then, conclude the panel.

MS. RESNIK: I think you've heard from many people concerns about staff and the interaction. If I recall right, in Alabama right now, people are paid $32,000 a year, roughly. So, one of the questions is, one is, how do you get a cheaper system? You have fewer prisons. Another is, in the places where you do have incarceration, you have to be sure that the facilities for the people living in it and for the people working in it are sufficient and adequate for safety, and that the people who are in it are trained. So, there's also, what's this training? Six weeks or two years? Some European systems have two years before you staff a facility in terms of that.

And then, the other question is pay. And there, going to the question around the country, wildly different amounts of pay.

And also, remoteness. I was told by the Director of Alabama how challenging it is when
a prison is situated in a remote place to have adequate staff and services.

So, on your recommendation list, I think I've just added more.

CHAIR LHAMON: Thank you very much to this panel.

We will reconvene at 2:40.

And just so folks know, Commissioner Yaki had to leave to catch a flight. So, it was not a comment on the panel when he departed, and we look forward to seeing him.

COMMISSIONER ADEGBILE: I thought it was me.

(Laughter.)

CHAIR LHAMON: It was a comment on you, yes.

(Laughter.)

(Whereupon, the above-entitled matter went off the record at 2:35 p.m. and resumed at 2:42 p.m.)

PANEL FOUR - REHABILITATIVE OPPORTUNITIES FOR WOMEN IN PRISON AND LIFE AFTER PRISON

CHAIR LHAMON: We will now proceed with our fourth panel, which is titled "Rehabilitative Opportunities for Women in Prison and Life After
Prison".

And as a reminder, given some of the topics that come up with regard to women in prison, I remind the panelists and the public and my fellow Commissioners that, since 1983, Congress has prohibited the Commission from taking in or serving as a clearinghouse for information about abortion. So, please tailor your remarks accordingly.

In the order in which they will speak, our panelists are: Chief Wendy Still, Chief Probation Officer, Alameda County Probation Department; the Honorable Brenda P. Murray, Co-Chair, Women in Prison Committee, National Association of Women Judges; Becki Ney, Principal, The Center for Effective Public Policy; Susan Burton, Founder, A New Way of Life Reentry Project, and Brett Dignam, Vice Dean of Experiential Education and Clinical Professor of Law, Columbia Law School, and as a point of personal privilege, my former law professor when I was a student at Yale Law School in the prison clinic.

So, welcome.

Chief Still, please begin.

MS. STILL: Thank you very much. It's an honor to be before the Commission today.
First, I want to commend the Commission for the work that you're doing. I have almost 40 years of criminal justice experience, with over 30 being in the prison system, and then, the remainder being out in community corrections. I'm a 42-year public servant. So, I just feel like I've had this discussion over and over again and relived parts of it today. Your work is just so important.

I'm going to talk about rehabilitation and reentry into the community, but I also want to, first, start off for a minute by talking about the transformation that the prison system in California went through as it relates to women prisoners. And it was driven by the Legislature's deep dissatisfaction with the outcome and the system and the services available for women. Had it not been for that type of high-level support and oversight, I don't believe that the transformation would have occurred, at least back then, "back then" being in the 2005 timeframe.

How I really became majorly involved in the work with women offenders and the reform was, back then, I was the Southern Regional Prison Administrator of 40,000 inmates; 50,000 staff was my responsibility. We had a new Governor. The
Governor wanted to reorganize. The Legislature wanted a high-level women's executive position to oversee and to transform the prison system. So, I was that person.

How I became that person was my first two issues that I dealt with was the shackling of female prisoners during pregnancy and, also, the elimination of the cross-gender pat search. I'm very proud to say California I believe was the first to put regulations in place to prohibit the shackling of women during pregnancy and during birth; in addition to that, to eliminate the cross-gender pat search. Several other states now have, but there's not an across-the-nation ban on those, which there should be.

There also was a requirement for the new Governor, then Schwarzenegger, to basically present a plan to the Legislature on how to transform the prison system. And so, I wrote that plan. And it was amazing. I have never read anything in government that was over a 70-page document that not one word was changed.

And that was because of the input of experts. NIC was of assistance. We basically contracted with the best experts on women, working
with women offenders at that time, as well as advocates and women that were actually in the facilities themselves.

So, with all that said, what came of that was a writing of Penal Code 3430. And why there is a Penal Code 3430, because the State was doing all the transformation at the time, and it was I knew that, when I left my job and different Assemblymen and Senators that were in key positions that were unhappy with the circumstances left their positions, that there was a great possibility that there would be a backwards slide. And we were right.

So, anyway, what the Penal Code required was that, for each woman coming into prison, that there would be an individual treatment and rehabilitative plan that was aligned services that the Department would review and update, and create a system of classifications specifically related to women prisoners, women inmates. Also, that there would be a staffing review; that specialized training for officers would take place, working in women's prisons; that programs would be created that were gender-responsive and trauma-informed. I remind you now, we're in the 2007-08
timeframe, right? So, this is not new news. That substance use disorder services, mental health services, health care, family reunification, education, wraparound services would be provided.

So, with that said, there were a number of efforts that were undertaken, creating the Individual Treatment and Rehabilitative Plan, working with the University of Cincinnati to create the risk/needs assessment that was gender-responsive. Dr. Salisbury spoke to that, as well as Dr. Pat Vanvoorhis. They basically created, utilizing the women in the correctional facility that we have in Chowchilla, basically to help them with that study, and then, also creating trauma-informed programs.

We had gender-restricted posts. We increased the number of gender-restricted posts. And we did an awful lot of research related to BFOQs, provided that to Washington State. And as you heard earlier, Brenda Smith was just critical in basically the development of that material that went to the State of Washington, that helped them basically fend off the lawsuit from the unions regarding the BFOQs.

Now I would like to fast-forward. When
I heard today 12,000 inmates in the federal system, I was really stunned. And the reason I was, because, back then, California's prison women's population was 11,470 women. We were the largest prison system in the nation at that time that had women. But now, I'm happy to report we've reduced that number by 50 percent.

How? By basically creating alternative sentencing programs out in the communities, closer to; also, by the giving of financial incentives to counties to basically reduce the number of women and men coming to State prison; and also, creating grants to the local counties, basically, so that women can have access to services as well as men.

In addition to that, we've changed laws. We've changed our drug laws and a variety of things. But, again, happy to report that we've seen an almost 40 percent reduction.

I'm short on time. So, what the important point is, when you're looking at trying to transform prisons, it's creating availability of actual number of programs, because there is an inconsistent number of programs in men's prison as compared to women's prisons. Typically, male prisons are better funded. Women's prisons are not
as well funded in terms of the type of programs.

And again, you don't want cosmetology. You don't want these programs that, when women are released, they basically are either unemployed or underemployed. Because when women are released, and they do go home, basically, what they have to deal with is they do not have their benefits enabled. They do not have identification. They're shackled to debt from previous probation violation sentences, fines, and fees, but, yet, that debt is waiting for them when they return.

And in addition to that, they have family reunification issues. You've heard earlier about the parental, losing their parental rights, and trying to get them reinstated without any kind of funding economically to help them with legal support, basically to get their parental rights reinstated.

Lastly, I'm happy to report that my County is partnering with CDCR the prison system, and we're mapping the system within the prison. We have a team in the women's prisons and in the male prisons, so that the system that's inside the prison complements those benefits and services that are available when the inmates come home, right,
when they become residents again, and that we have
the housing, the education, the career/technical
needs, and all the other benefits, family
reunification, and trauma-informed practices to
support them.

Thank you.

CHAIR LHAMON: Thank you, Ms. Still.

Judge Murray?

JUDGE MURRAY: I'm a little out of my
element --

CHAIR LHAMON: I think your microphone
turned off. Thank you.

JUDGE MURRAY: Okay. I'm a little out
of my element because all these professors, with
all these people with vast experience, know a lot
more than I do. So, I've been sitting here all
morning, and I just want to pick up some things and
see if I can add anything to this.

I represent the National Association of
Women Judges, which was started in 1979 to work for
gender equality in the justice system. And we
started a Women in Prison Program in 1991,
basically, as the result of Judith Resnik, who
causes trouble wherever she goes.

(Laughter.)
JUDGE MURRAY: But, anyway, when we first started, they told us that women judges had no right to get into this issue; that under the Constitution, we were the third branch and this was the first branch's thing. And so, we shouldn't have anything to do with this. Anyway, we have overcome that.

The two points I would like to make with you is that the top judicial people in the United States, Justice O'Connor and Pat Wald, have always been members of this Association. So, somehow, people thought we were important, and they were able to get us meetings. We have met with every Director of the Bureau of Prisons. Okay? And we have told them, quite blank, you know, "You are doing a lousy job."

(Laughter.)

JUDGE MURRAY: And they have given us coffee, donuts, nothing. We haven't accomplished a damned thing except -- except -- Alix McLearen really, we pushed that job because they had nobody. They had a lady with no background. So, Alix, we got that established.

But they've allowed us to visit every prison, and we've visited several of them. In
fact, we were the group that went to New York and
that Metropolitan Detention thing, and it was Judge
Gonzales and Judge Betty William, my Co-Chairs, and
there's Judge Bev Cutler. We went and we saw.

They had over like 120 women in two
rooms where they ate, they went to the toilet, and
they slept in these two rooms, identical. And they
were keeping them temporarily. And it was
like -- I don't know; Betty, how long was it? -- it
was like two years they were there.

And then, when we got back to
Washington and we said it to them, they said they
didn't know about it; they didn't really realize.
It was all somebody's fault in New York who didn't
tell them that -- I mean, it was absolutely
inhumane.

So, we have done pretty good work, some
of it, but we haven't done half as much as we
should have. But we got a meeting with a big shot
in the White House, and I can't really tell you
who. So, we get ready for this meeting, and all of
us get all pepped up and everything. And we go in
there and we've got to make our case that the
Bureau of Prisons is, you know -- and we get in
there and we say, "Now we want to talk to you about
the Bureau of Prisons." And the person says, "It's a mess." And we said, "What?" And they said, "It's a mess. We know it's a mess." And so, all our arguments went out the window. Why they didn't fix the mess, I don't know, but they admitted, these big shots that knew what was going on admitted that it was a mess.

So, the questions you've asked about data, that's pie in the sky. I mean, you can't get any data. They don't keep this kind of data that you think. They are -- "disorganized" is a nice word.

Now Alix told the gentleman over there that there were gynecologists. When we visited Hazelton, West Virginia, there was no gynecologist on staff, and there were a large proportion of those women who spoke Spanish. There were no Spanish officers. The women complained about it.

What we insist, when we visit a prison, is that we meet with the women prisons without any guards around. And I don't know why, but the Bureau of Prisons has always let us do that. So, we have a private meeting with the women who are residing in the prison, and they tell us things which are not what the staff of the prison thinks.
So, okay, there's a whole lot of other stuff I wanted to tell you.

Besides the big national thing we do, we do a book club and we do programs in New York. The judges in New York do a lot. The judges in Alaska do a lot. The judges in Florida do a lot. We run book clubs. We run reentry programs for the women.

If you ask the women about their reentry programs, they will tell you they're lousy; they're no good. And the one thing about Hazelton, when we visited Hazelton -- I know it's over 500 miles -- some of those women were there from far, far away, and they volunteered to go there because they were promised programs. When they got there, there were no programs. But those women, they want to succeed, not all of them. You know, some of them are worthless. But most of them really want to improve themselves, and they're not getting an opportunity to do it.

Now I want to make sure, I've given you policy recommendations from the New York State because Betty will shoot me if I don't give you another copy. Okay.

And then, one thing I wanted to tell
you, which is just absolutely dreadful, in my book
club that we run, we've had one suicide about three
or four months ago. And then, the prison had
another suicide four years ago. And they had to do
a report. Maryland law required them to do a
report because this lady had a mental condition.

Restrictive conditions apply to
individuals with serious disabilities. This is in
the Maryland women's prison. Violates the 8th
Amendment of the United States Constitution,
Article 25 of the Maryland Constitution, the
Americans with Disabilities Act, and Section 504 of
the Rehabilitation Act.

I brought copies of this report. If
you read this report, you will not sleep tonight, I
promise you. We've got one Maryland legislator who
has agreed to introduce a bill to make that prison
shape up on the way they're holding their mental
prisoners.

Now the women tell me that they're
stuck, the warden's stuck because these women have
mental conditions. They should go to a mental
hospital. There's no mental facility to send them.
So, the courts are sending them to the prison. And
then, the warden is stuck because she can only keep
them in solitary for a couple of days, and they have to release to the general population. The other day, one woman with a pen went into the eyes of her roommate. And so, anyway, okay.

I told the women that I was coming here today. So, one of the inmates wrote an article, part of her writing class. And so, I've brought that for you.

You keep talking about recommendations. I think you should dump that. You should talk about demands and orders, that you're in a position to maybe fix things. You don't want recommendations. They'll ignore your recommendations. Nobody gives a damn about these people.

I've tried to get the women's legislator in Maryland --

CHAIR LHAMON: Thank you very much, Judge Murray.

I think several of us need to turn our microphones off, and then, yours will turn on.

MS. NEY: There we go. All right.

So, thank you very much for asking me to come today. I am Becki Ney, one of two Principals at The Center for Effective Public
Policy, where I've worked since it was established in 1981. Since that time, we have worked on numerous criminal justice reform efforts in this country, including the National Resource Center on Justice Involved Women, which I've directed since 2010.

We work in partnership with the National Institute of Corrections, who I think you have learned today without whom there would not be a women's risk and needs assessment tool, without whom there would not be a gender-informed practices assessment, without whom there would not be a federal presence that has taken on this issue in some of the ways that you have. They provide training and technical assistance to the field, as do we, and we represent that organization who can disseminate and provide all the information that Alabama and North Dakota, and others, are doing, which we do.

You've asked me today to talk about rehabilitative opportunities for incarcerated women and their preparation and process for a successful transition and reentry. I know that you will talk more eloquently about that than I. But let me put that into some context for you just for a moment.
We have had numerous conversations today about tampons, toilet paper, and the use of restraints for pregnant women. These are the easy things to do. In the 21st century in the United States of America, I would hope that we would be past those conversations.

Now I'm going to talk about the hard stuff. All right. To my knowledge, there have been two comprehensive studies that have been specifically looking at institutional program availability for men and women. One was conducted by Mary Morash and her colleagues in 1994 on programs that were established in the 1980s, not very relevant to our discussions today.

In 2013, Courtney Crittenden built on that study in her doctoral dissertation. So, in an unpublished doctoral dissertation, we have a little more data that's a little more current that suggests that there may be more programs for women than men. However, they are largely gendered programs like cosmetology, sewing, textiles, and the like, and that they may or may not be appropriate.

The most common programs we find in prisons for both men and women are educational
programs, in part, because there is a lot of legislation in this country that requires folks to have a GED. Without a GED, you also can participate in some states in other kinds of programs like vocational education or prison industries, or other kinds of programming. We have work programs inside prisons such as prison industries, vocational programs, work assignments in the kitchen and maintenance and laundry.

And we have drug treatment programs because of the high incident of substance abuse among incarcerated populations.

We also have a variety of other kinds of programs, religious and Bible classes, recreational programs, special events, and things that are not evidence-based, but provide opportunities for women and men to participate in things other than being idle and laying around in beds and being bored out of their minds.

In terms of treatment programs, we find both gender-neutral, those programs that reduce recidivism for both men and women, evidence-based, and gender-responsive programs, which are increasing, but, still, we have a long way to go. These are programs that address the unique needs of
women.

While gender-neutral programs do work to reduce recidivism, as I suggested, we know we can do better for women. And, in fact, in a 2016 meta-analysis conducted by Kelley Blanchette and her colleagues in Canada, she found in over 37 studies that included nearly 22,000 women that women who participated in correctional interventions had 22 to 35 percent greater odds of community success than those who did not participate in evidence-based programs for women.

But just because there are programs doesn't mean they are necessarily available. In my nearly 40 years of working in corrections, it has never been said to me once by anyone, staff or women, that "We have enough programs here." Never. The women will tell you we don't have enough programs. We don't have enough meaningful programs; that we have -- forgive my words -- "stupid programs that have nothing to do with the reasons why I got here or who will aid me in anything going out of this facility".

Now there are lots of reasons for that, and it's not for lack of trying. When resources come in tight budget situations, the programs are
the first to go because that's the soft stuff we can get rid of. The type of facility -- as we've heard, many women's prisons were built for men, and then, women were put in them -- we don't have enough program space. We have movement issues. The program areas are often in a different part of a facility than where the women are housed. Discipline issues, security level, sentence length, optimal group size, all these things impact who can participate in prisons.

Attached to my remarks is a chart of some of the evidence-based programs for women that we know are successful by research.

We also know we can't do programming in a facility for just a small group of women. Those women who for the first time participate in a program that may be meaningful to them, then, go back to their cell block where other women are not participating in programs, with staff who have not been trained in how to work on them, and then, sometimes we make things worse, I think, because we show them how things can be, and then, we do not support their changes in the ways that can be helpful.

In surveys conducted by my Resource
Center over the past eight years in nine women's facilities that included more than 4,000 women, only 37 percent felt that staff were helping them with information about resources and services in the community. That means 63 percent of them say, "This is not helpful to me when I get out."

We know from the research that 60 percent of women released from incarceration are rearrested. Most are returned for technical violations, meaning they violate a rule for supervision, not a new crime. So, it says to me that we have to have a larger continuum than just looking inside facilities.

In summary, I guess I would say, because I'm running out of time, that women are better served in the community, as you've heard today. There are about 114,000 women in state and federal facilities. That is a number that we can wrap our hands around. We're not talking millions of people here. It ought to be a solvable problem. We have research. We know what we need to do. We simply must act and have the will and courage to do it.

CHAIR LHAMON: Thank you very much, Ms. Ney.
Ms. Burton?

MS. BURTON: Thank you so much for this opportunity to be here. If I had thought back 20-some years ago, I would never have imagined myself in D.C. at the Commission talking with you all about the programs for women who are incarcerated.

I was incarcerated over 20 years ago. For 20 years, I cycled in and out of prison, trying to find a way, trying to find a foot up.

I'm going to tell you a little story, and it's not just my story. This is a story of the women that we incarcerate, over 70 percent of them.

I lost my son. He was 5 years old. His name was "KK". And that was after I had endured a lifetime of trauma, abuse, all types of abuse. And when I lost KK, I just couldn't handle it anymore and I began to drink. And I drank alcoholicly, and that escalated to drug use.

An LAPD detective accidentally killed my son. There was nothing for me to help me with the loss, the trauma, the grieve. So, I drank, and then, the drug use, and then, prison.

I didn't go to prison one time. I was sentenced to prison six different times in a 20-year period. No one thought enough to invest in
me, that I might need some help instead of punishment.

And we're sitting here today and we're talking about how to make prison a little bit better, but the reality for us is prison is made for punishment. It's not made to be bettering the people there, the way it's constructed, the way it's rolled up. It's made for punishment, and it's doing exactly what it was made to do.

I left prison six times. Got off a bus downtown Skid Row, LA County, and tried to make a life for myself. It was impossible. I had no ID. I had nowhere to go. I had no good contacts. So, I failed and I went back until I got help.

After getting help, I started A New Way of Life Reentry Project, where in my home I began to take women in. And now, it's a 20-year organization and over a thousand women have came out of prison. And I go back to prisons and, you know, I try to usher them into safety and create an environment that would allow them to heal, not only from their past experiences, but from the trauma of incarceration. I call leaving prison "You need to detox," detox the trauma, and just try to find yourself and connect with yourself.
When I was in prison, I begged for programs. Before I went to prison, I begged the courts for something other than prison, but I was always sent to prison and there was never enough programs there for me.

So, out of the thousand, over a thousand, women who have came through the doors of A New Way of Life, nobody has -- I'll say 30 percent of them might leave the prison with an ID. If you leave prison and you've been out of the system over 10 years, if you've been in prison over 10 years, you are erased from everything in our world, in our environment. You know, no ID in the DMV system. We have to go to get a birth certificate. I've had where I flew to another state to get a girl a birth certificate because we couldn't ID her and we couldn't work with the agency.

The patrol department, her patrol officer could have made a couple of calls and used that government document to get her birth certificate, but they didn't think enough and wouldn't invest in that woman. But we got her what she needed.

The lack of the ability for these
correctional systems to see the humanity of people, to understand the potential of people, it's just not existent. They shuffle and they push, and they push people around, and they don't really meet the needs and don't even see where an investment could be made, or there would be a payoff on an investment.

I've been sitting here today and I've heard the word "offender" used in the same statement you're talking about trying to help me, but you're calling me a really nasty name and it just doesn't jive.

When we talk about coming out and starting your life over, we have to fight all the way. We always have to go the extra mile. I recently wrote a book. I took that book into 30 states, into 30 prisons, and sat down and big book talks with women. And this is the prison edition, the paperback that I made of that book for women. Some prisons wouldn't let it in. Some prisons did and I went to those prisons.

I recently applied for global entry because I was traveling so much. I was denied because I have a prison history.

My insurance policy or the insurance
policy I was going to buy asked me if I'd ever been incarcerated, and I checked the box, and I got denied, insurance, you know, life insurance. They call it "death insurance," life insurance, you know. I was denied.

But the struggle of people, of women, before, during, and after incarceration is just a little -- it's horrendous.

CHAIR LHAMON: Thank you, Ms. Burton.

MS. BURTON: My time's up.

CHAIR LHAMON: Professor Dignam?

MS. DIGNAM: Well, thanks a lot for having me speak after Ms. Burton.

(Laughter.)

CHAIR LHAMON: Your microphone is not on.

MS. DIGNAM: Okay. I'm going to try to adapt my remarks and fill in the blanks because, obviously, there's been a lot of overlap.

And I just want to thank the Commissioners for your sustained engagement and attention to this really important range of issues.

It has been my great privilege to represent incarcerated women at the federal prison in Danbury, Connecticut, and state prisons in both
Connecticut and New York, for more than two decades. I have done this work in the context of law school clinics, first at Yale Law School and now at Columbia Law School.

The women who have lived this experience have generously shared their lives and taught my students how the policies and law we study in the classroom are implemented in practice. The clinic now called "Challenging the Consequences of Mass Incarceration" focuses on conditions of confinement.

Federal courts have appointed us to cases that have included challenges to federal policy that allowed invasive pat searches by male officers of women participating in a residential trauma treatment program; medical claims, including an unsuccessful attempt to obtain a necessary hysterectomy, and then, breast cancer treatment for one person; the right to wear a hijab in an official prison identification photo, and sexual assault by correctional staff.

Our current docket includes a number of women, most of whom have extensive histories of abuse and have been convicted of violent crimes, who are seeking release from the New York State
Board of Parole. Rehabilitative programming is central to that process, and the obstacles to successful reentry are all too apparent in our work.

So, when I looked at the topic of this panel, and it was rather broad, "Rehabilitative Opportunities for Women in Prison and Life After Prison," I went back to the data, to some of the statistics. And I think I have some that might plug into some of the questions that have been asked.

But we're at a moment in this country where there are a variety of people who are actually saying that they're interested in reforming the system. And we should have no illusions that one of the primary drivers for that is the cost of mass incarceration.

A few years ago, when Pew a study that documented that 11 states were then spending more on incarceration than education, people took notice. At the same time, communities who had serious unmet educational and other needs had unprecedented numbers of their parents in prison, on parole, or probation.

But more compelling to many, because it
was quantifiable, and still is, is the cost of incarceration. Incarceration is, of course, far more expensive than pretrial diversion, home confinement, or probation and parole, but expenses of the entire system have prompted many to focus on recidivism as the metric by which we can measure rehabilitation.

Rehabilitation is both a sentencing goal and a predicate to parole. I acknowledge that pretrial diversion is not really within the scope, the very large scope, of what you asked us to talk about, but I would urge you to think about it and to look at footnote 2 of my written testimony, which cites a case in the Eastern District of New York where there's a very innovative pretrial diversion program and a very compelling story of one woman whose felony conviction was set aside when she successfully completed the pretrial diversion program.

So, recidivism facts, a few. Women have lower rates of recidivism than men. The U.S. Sentencing Commission became concerned about recidivism and has done a series of reports that focus on sentencing and what factors correlate with recidivism.
In 2016, it analyzed more than 25,000 people who were released from prison in 2005. One of the problems that we faced with data collection is, by the time we get a dataset and completely analyze it, 10 or 15 years has gone by. So, with that taken into account, I did the best that I could.

The Commission considered gender, along with several other factors, notably, race and education. Male offenders were rearrested at higher rates, 52.2 percent, than females, 36.4 percent. Those without a high school diploma had the highest recidivism rates, 60.4 percent, while those with some college failed at a lower rate of 39.3 percent, and college graduates -- we used to fund college education in prison, but, in 1994, when the Pell Grants ended for prisoners, that was foreclosed and dramatically decreased -- college graduates at the lowest rates of recidivism, 19.1 percent.

So, rehabilitation matters. I applaud the Commission for looking at it. It matters both for parole and successful reentry. Parole boards typically look at exactly the same characteristics that someone looks at in sentencing. They want
documentation of rehabilitation, which is programming in prison. If you don't have the programs and the certificates, and you can't demonstrate that the risks that led you there have been treated, your chances for parole plummet.

So, women are less violent than men, as you've heard. They're mothers. Ninety percent of them, according to the Bureau of Prisons, have experienced trauma. They have different mental health needs.

There are a few programs that I know you're familiar with because you've looked at the OIG report, the recent report on Women in the Federal System. And I recommend that you look closely at the resolve, the trauma program, and the findings in that report. There are very concrete suggestions about staff vacancies and the low level of staffing.

Also, if you take a look at the residential drug program and the women who were in those programs, some of the things that recent reports have found is that there are 11 of those programs provided for women at nine facilities. There are 72 of those programs provided for men at 65 different institutions. There are only two
Spanish residential drug programs, one for men and one for women. And this is at a time where 7200 of the 13,000 women were convicted of drug offenses.

CHAIR LHAMON: Thank you, Professor Dignam.

MS. DIGNAM: I have more, but I see that my time is up.

CHAIR LHAMON: Thanks very much. So, I'll open it for questions.

Commissioner Kladney?

COMMISSIONER KLADNEY: Thank you. Actually, speaking to programming, Ms. Ney, you spoke very passionately about the programs that are needed. I take it in most prisons they don't exist? Drug programs exist; trauma program exists. I'm talking about vocational programs, basically. Talk to me about where they don't exist, but also talk to me about where they do exist and capacity to take people into them.

MS. NEY: Sure.

COMMISSIONER KLADNEY: Anyone else can respond, too.

MS. NEY: So, I think we have more programs in existence that address trauma, as you know; that address the risk factors that are unique
to women, different from men. So, while we have

drug programs as being one of the more common
programs in prisons for men and women, that doesn't
necessarily speak to what they're doing in that
program. So, some may call them a treatment
program, and it's really a support group. It's not
what I would call a treatment program facilitated
by a clinician or a professional who understands
how to do that. And it's certainly not a holistic
program in some of the ways you've heard earlier
that are sort of talking to women about all the
different ways in which substance abuse kind of is
part of what she's doing.

I mean, you've heard from Ms. Burton
about what it was that triggered her substance use.
That's true for many women. So, it's not that
substance abuse is the particular issue. We're not
treating the issues that got us there to begin
with, which has to do with sort of the trauma and
the past history, et cetera.

So, I find, at least in all of the
prisons I go to, I find that there are programs.
Typically, 10 to 20 percent, I would guess, is what
I see about the capacity and the number of people
who can participate in them. I have never seen a
prison where everyone is getting any programming who wants it -- never. Some of that's about money; some of that's about the nature of prisons; some of that's about the capacity, as you say.

So, if I have a lot of women coming into a facility who are there for, say, two years or less, and I want to make sure they all get a program before they leave, and the program is 14 weeks long, I'm constantly churning the short-term women through that program, and the women who were there for a long time never get into it. So, that's some of the dilemma.

COMMISSIONER KLANDNEY: Ms. Still, you touched on this. And actually, no one has really touched on it all day. You know, pretrial diversion, community house arrest, programs in the community, keeping people in a community rather than going to prison. You said California cuts its prison population in half with women. I take it without much exposure to the public safety?

MS. STILL: That is correct.

COMMISSIONER KLANDNEY: And I was wondering, the money you saved by not sending half of those people to prison, was California able to beef up its local programming to keep women in the
community?

MS. STILL: Yes. Yes, it has been, significantly. There was an initiative. It was called AB 109, and it was a proposition. Basically, what the Governor and the Legislature did is they incentivized the locals. They changed the law to where you couldn't send a technical violator back to state prison. And as we heard earlier, women going back to state prison on violations of parole, a lot of them were technical violators.

In addition to that, lower-level crimes, which women were predominantly incarcerated for, they basically no longer could go to state prison. They would spend their time in local jail prison. So, they would remain locally, again, where families closer to the support services, the community in which they came from.

There was funding generated for that. In my County, as an example, I get $50 million a year in my County to basically provide these services and alternative programs.

They also created the legislation, the Community Corrections Partnership Act, which I chair as the Chief Probation Officer. The public
defender, the district attorney, the court are basically all part of this group. We also have our Health Services Agency, and we have our public defender and our Social Services Agency, all involved.

And the whole thought behind it is, if you create the programs in the community, one, you're going to reduce the numbers going to state prison. And they were facing court-ordered caps. It wasn't like they did this because it was the right thing necessarily to do. It was really forced by the court. If they didn't reduce the population, then, basically, they were going to get court orders to release it.

But, anyway, that funding, then, our community, which we are a very progressive community, our board made a commitment that 50 percent of that money went into CBOs to provide services for our reentry population. And for me this year, I have oversight over $24 million for our local County.

And so, all of those things made a difference, but it also depends upon which county by geography. If you're in the Bay Area, in a very progressive county, we have got services. We have
got programs, and we care about keeping you home. You're our resident, right? But if you're in the Central Valley or if you're in parts of southern California -- Susan, you can probably attest to this -- it's a much different story. So, again, going back to the lack of standards, it's all driven by what the values of the community are.

COMMISSIONER KLADNEY: Thank you.

Ms. Burton?

MS. BURTON: Yes, I just want to add to that. Northern California has been very progressive and smart with their dollars from that AB 109 program, where the legislators shift the responsibility to local counties for the people who were doing non-violent, not-serious, non-sexual crimes.

But, now in southern California, our county jails have went to where it's triple bunks, and people can hardly walk through the areas in the local jails. So, they have shifted it from the prison to the local jail, where the people are warehoused, and there's no programming hardly at all.

COMMISSIONER KLADNEY: Nor is there any place to hang out outside.
MS. BURTON: No place to hang out, bathrooms. I mean, there are real conditions over there, but, you know --

COMMISSIONER KLASNEY: Professor, I hate to put you on the spot like this, but Judge Boulware in Las Vegas talked to us about sentencing, federal crimes, and keeping women at home. And I can't remember the statutory scheme --

MS. DIGNAM: He did.

COMMISSIONER KLASNEY: -- or anything like that, but I know you can deliver.

MS. DIGNAM: This is in the Ninth Circuit, where we were last April.

COMMISSIONER KLASNEY: Yes.

MS. DIGNAM: And it was a very specific section of the U.S. Code, and he's a man on a mission to educate defense attorneys that judges actually have the power. And he has been doing it to sentence.

I will get you the section of the Code because -- I will get you the section of the Code, but I don't remember it right now.

But, yes, he has a very firm determination to limit that.

COMMISSIONER KLASNEY: And it has to do
with U.S. Marshals --

   Right.

COMMISSIONER KLADNEY: -- and all that.

MS. DIGNAM: Right. But I'll get it for you, I promise.

COMMISSIONER KLADNEY: Thank you very much.

Madam Chair, it's all yours.

CHAIR LHAMON: Madam Vice Chair?

VICE CHAIR TIMMONS-GOODSON: Thank you very much, Madam Chair.

Professor Dignam, if you will, you've told us that the level of education that those that are incarcerated have certainly affects the recidivism rate. And you highlighted the fact that the Pell Grants at one point were available for individuals in prison, and that was also my understanding; and that, at its high point, more than 300 colleges and universities were going into the prison system and providing education. But, then, we got tough on crime and someone argued that it's a scam; folks are going out and committing offenses to go to prison, so they can get a college education.

   (Laughter.)
VICE CHAIR TIMMONS-GOODSON: You laugh, but that's some of what was said.

But what I want you to address for us is whether it's good policy, and, in fact, should once again become the law, the availability of Pell Grants or some kind of financial assistance for those in prison. Talk to us about that. Perhaps that might be a recommendation.

MS. DIGNAM: I would be happy to talk to you about that. I had a longer section which I took out, but I am happy to give back to you. I actually looked at this and published an essay a couple of years ago in the University of Connecticut Law Review, because the statistics are really overwhelming.

First, the background. It was 1994. We were getting tough on crime. And you're right, and anecdotally, people would say, "I can't justify giving a college education to these women when my staff can't educate their kids." So, that was part of the tension, was that the price of an education was going up.

When I was in Connecticut, administrators used to refer to it as "Yale or jail". So, the cost of a college education was
about what it cost to incarcerate a person for a year, the difference being that kids are typically in college for four years, and people stay in prison a lot longer.

And the statistics really are very compelling about the recidivism rate. The more education you get, as I highlighted earlier, the lower it goes.

So, after it disappeared, there was private reaction. People like Doris Buffett and George Soros funded some efforts for college; now does private things.

President Obama reopened the Pell Grants with a pilot program a couple of years ago. That was very promising.

I will say the FIRST STEP Act of 2018 -- and one of the byproducts of being invited here was I got to at least look at it a little bit, but it's very long -- it does include funding for job and vocational programming, $375 million.

At Columbia, we have a Center for Justice that takes a lot of educational programs into the prisons, and we're hoping to clone that effort at different universities around the country. And we're going to look at that provision
and see. And it specifically, also, authorizes groups from the outside to come in. So, I think the notion is, this is going to come from outside.

There are very innovative programs like the Inside-Out Program out of Philadelphia, where professors from places like Columbia and James Forman at Yale, take students from those institutions and bring them into the prison and teach a class with people on the inside and people on the outside. And it's really quite profound.

Yale students have been going to Green Haven since Attica to have a bimonthly conversation with people inside, and many of them discuss it as one of the most transformative experiences of their college career.

VICE CHAIR TIMMONS-GOODSON: Ms. Burton, you touched me when you said that it was offensive for the term "offender" to be used, and at the same time, one is reaching out and talking about help. Please tell us what you would deem a more appropriate way to refer to folks, because we certainly would want to do that.

MS. BURTON: So, I'm a person. I'm held as a prisoner or I'm formerly incarcerated, but I'm not an offender. You know, I survived some
stuff. You know, I'm a survivor, but I'm a person. I'm an individual. I'm a woman. I'm a formerly incarcerated. I have experience in the justice system. I consumed some of their products.

But when I hear the word "offender" or "those offenders," it just doesn't fit with here. I'm an offender, and then, I'm going to help you with the trauma, or, you know, I'm a trauma-informed offender, or what have you.

VICE CHAIR TIMMONS-GOODSON: Also, is formerly incarcerated more acceptable?

MS. BURTON: Formerly incarcerated, people being held, but not offenders.

VICE CHAIR TIMMONS-GOODSON: Thank you for enlightening and educating all of us.

MS. BURTON: Thank you. Thank you for asking.

CHAIR LHAMON: Commissioner Narasaki?

COMMISSIONER NARASAKI: I'm very interested in sort of how you can use technology these days to address two issues. One is the education and training. So, with the technology we have today, you don't actually need to send people. And we've talked about how hard it is to get people to really rural areas to provide those kinds of
educational services.

So, is someone trying to develop suites of things? Or are there particular challenges to getting technology into the prisons that it would be helpful to have someone create guidance about or to say to foundations, "Hey, this is someplace that you might be investing."?

Because we see on television all the time these adult learning at home on the internet systems. My alma mater provides learning, if you want to, for alums, right? So, what is going on there?

And then, the second thing is, increasingly today you're not a person if you don't have an ID. There's a story around D.C. where churches are spending their own time and money trying to help people who are homeless get IDs because they either lose IDs or IDs get swept up when their camps get deleted by the local government periodically. And then, people who are not from here have to try to figure out how to get their birth certificate from somewhere else.

Is there someone in the government trying to figure out are there some standards that maybe prisons should be required to make sure you
leave with an ID or something that would more systematically address that problem?

Because, my experience, most of the buildings in D.C. you can't enter if you don't have an ID, much less do anything once you're there. So, I'm just wondering if there's some system or things that we could be recommending.

MS. STILL: I'll take a couple of those. In California, the Governor and the Legislature, they mandated CDCR to partner with DMV, and to create the ability for individuals returning home or returning residents to basically get their ID before they're released. I won't say that they're 100 percent, but they are so much better than they were before.

There are educational learning networks also. The education is there. It really is just a matter of -- and it's been there for quite some time -- to set up the internal networks and the technology to allow it to be education on demand, you know, from a variety of universities.

California has allowed colleges now to come back into and have our individuals in prison that participated in college programs, and it changes the violence also. It reduces the overall
conditions, because, if you have someone actively involved in something positive and you're creating a strength-based learning environment, basically, that's going to start to break away or chip away at that punishment culture within the institution. So, that's another byproduct.

The other thing that some prisons are doing -- certainly in California it's allowable now -- is to have technology, to allow the inmates to access. We actually have San Quentin the Last Mile Coding Program, and they code and there's a partnership with Google. Individuals that graduate and are released from prison going home, then, go to work for Google at this.

I have a youth detention center, a juvenile hall, and basically we're bringing that technology into. So that my youths in juvenile hall, where really, historically, there was always a concern that basically inmates in custody would use the technology to reach out to victims or to do illegal things, and, in fact, some of those things have happened. But technology has come so far now, there's all kinds of protections, you know, firewalls that you can create. But that's, historically, where the resistance has come from.
MS. BURTON: California has a form that waives the fee that government -- waives the fee for an ID, that government entities and nonprofits can use, and I can send that form to you, for you to have a look at.

But the 30 percent of the people that are talking about coming back into a new way of life that do have IDs -- the other people have been taken out of the system after that 10 years. And so, it's they don't get their IDs and it's more difficult to get their ID, to get the paperwork, the birth certificates and all the documentation needed for an ID, and then, onto the Social Security card.

But the State Legislature did pass a law that says CDCR should have people released with IDs. They just -- I guess it's improvement, progress, not perfection.

But I'll send that. I'll send that form to you.

MS. NEY: That's also true in many other states, I think coming out of the reentry effort supported by the federal government over the last 20 years, and there have been numerous programs. There has been a big focus on this
issue. But, as you've heard, it's not always an easy thing to find a birth certificate, which may be in a very different state than you are residing at the moment, which you need to get an ID. And unless there are folks who are willing to do that, it takes a long time.

I was recently in South Dakota where I'm working with a program to keep women out of prison. Many of them, I should say all of them in this program at the moment are Native American. A woman has never had a driver's license in her life is in her thirties. Staff took her to the reservation, which was an hour's drive. They spent a couple of hours there just trying to figure out where her birth certificate was and what it was -- where it was. They took her DMV. She got a driver's license. That was almost a full day --

MS. BURTON: Yes.

MS. NEY: -- of time, of somebody's time.

She was not able ever to navigate that on her own, but that's what it takes to do that kind of work.

MS. BURTON: That's what it takes.

MS. NEY: In regards to your technology
question, I have seen more and more prisons distributing tablets to the women, and that's a key opportunity to do higher education and other kinds of programming. It's certainly not in every prison, but it is more, it is becoming more and more the case.

I was recently in a very large prison where all the staff and the women are on the same internal email communication. So, every time an announcement goes out, everybody in the facility knows what's going on. They use that for scheduling. They use it for all kinds of things. So, I think it's coming along.

COMMISSIONER NARASAKI: Are there programs or something that the federal government could be recommending or pilots they could be helping to fund or companies they could be convening? Like what helpful role, if any, could the government be playing?

JUDGE MURRAY: Well, this doesn't directly answer your question, but I think the last Attorney General, Mr. Sessions, fired the person that Mr. Obama appointed as head of education in the Bureau of Prisons.

COMMISSIONER NARASAKI: Oh, good to
JUDGE MURRAY: No, but to get back at the state level, my experience is so much of it depends on the warden and the director of corrections. In Maryland, a few wardens ago, we had a wonderful women who was willing to get somebody to rewire because the buildings are real old. So, they had to rewire the building. And then, a group of us volunteers bought tables and bought computers and bought printers.

We also started a college program. It's since been taken over by Goucher College, but volunteers started the college degree program at the Maryland Correctional Institution for Women.

MS. BURTON: I'd like to mention a program that, while I was touring with my book, I went into the Arkansas Department of Corrections. And there was a program that was being delivered by the staff there called "Think Legacy". And I left there feeling so moved and impressed by the participants in this Think Legacy Program.

And I would say maybe you look into that Think Legacy, with Nicole Smart and the Arkansas Department of Corrections. It looked, felt, and seemed as though she had created a
program that was very, very forward, very rehabilitative. And I don't know the exact words I want to say, but the people were so responsive and connected, more than in any prison I've ever been in. And I think it was because of that Think Legacy Program.

CHAIR LHAMON: Maybe I'd like to pick up on that last set of points, if I could. You described, Ms. Burton, your work as sort of filling in need that the prisons don't in supporting recovery, where you're working in the last couple of decades. And I wonder if you could share with us what are some features of success of that kind of work that perhaps we could hope the prisons could pick up before people have left.

MS. BURTON: You're talking about with A New Way of Life?

CHAIR LHAMON: Yes.

MS. BURTON: Yes. So, we support people to create self-identified goals. And then, we support them to reach those goals. We have upwards of 90 percent success with helping people to reach their goals that they have set for themselves, be it school, be it reunification, be it jobs, whatever those goals are.
The other thing that we do in A New Way of Life is that we don't put a timeline on the amount of time that people can stay with us. We end up keeping on expanding and expanding, but we have levels of housing from our initial reentry homes, where they are fully staffed and people are really engaged and supported, to like we drive them to go get their IDs. We take them to go for benefits. We teach them how to navigate the systems.

And after they've learned that, then they can go to independent housing. In independent housing, the houses are maintained by the women who that have came through the first two homes, and they stay there until they can save up enough money to move out independently.

But they're not on a timeline to say, in 90 days, you've got to be through or 60 days you have to be through. We know that reentry is very individual and success is very individual. You might have one woman who gets it all together in five months. She gets out. She gets the job. She saves her money and she's able to move out. You might have someone who doesn't have a well-paying job, doesn't have money management skills, and it
takes a little more time to work with them. So, they have the security and safety of knowing that they don't have to be, they're not going to be dropped off or the services stop at some point.

We have employment specialists. We have a team of lawyers to help them reunite with their children, to help them through employment challenges, or different areas. Post-conviction relief, the lawyers work with them and the broader community.

And then, we also teach them leadership development. We teach them how to go and speak with our elected officials. We take them to Sacramento. We take them to the Board of Supervisors. They might come here with me and be a part of this community, be a part of understanding what this Commission does.

And so, we engage them in a way that says that their voices are important, their experiences are important, that they are important, and that they are invested in and they are supported to go on beyond what probably they ever dreamed imaginable they would, than they ever imagined was possible.

Like I'm here today, and I never
imagined this was possible, but someone invested in me. And so, I invest in someone else.

CHAIR LHAMON: Thank you.

MS. BURTON: Yes.

CHAIR LHAMON: Ms. Still, your written statement recommends that custodial facilities create a cultural environment where staff understand how to effectively manage disciplinary issues within a balanced system of support and accountability. And I hope you could describe for us what the features of such a system are.

MS. STILL: Yes. In terms of --

CHAIR LHAMON: Yes, I think your microphone's maybe not on. Oh, now it is, yes.

MS. STILL: Is it on? Yes.

In terms of balanced system, it's recognizing that -- and it was mentioned earlier that there's a strength-based approach. So, you're just not correcting behavior in a negative way; that you're encouraging positive behavior with incentives, and the incentives can be very small, but they are very meaningful. That helps to change the culture.

And then, also, in terms of the way that disciplinaries are looked at. What's driving
the disciplinary? Does the woman have a mental health condition? Is there a trauma trigger that's been triggered by whatever created the rule violation? Those are all things, if you're creating a strength-based system to address disciplinaries, that you look at.

And then, also, the officers, the reviewing officer, rules violation, we call them hearing lieutenants in California; that they're highly trained to look and to add value and weight to all of those factors. And instead of in a punishing way sending somebody off to solitary or taking their visits away or doing other things, that there is perhaps a resolution to it. Maybe the woman participates in additional training or mental health programming or a Beyond Violence type of program that's going to actually correct whatever the issue is versus just punishing and taking things away.

CHAIR LHAMON: Professor Dignam, after some decades doing this work, tell us, based on pretty healthy progress up until now, what is a basis for hope and what are the things that you think would be necessary as second, third, and fourth steps?
MS. DIGNAM: This is the basis for hope, is that we really have a very robust formerly incarcerated community. I now live in New York City, which has a really vibrant community. Los Angeles has a really vibrant community. I cannot overstate how important it is to have people who've actually lived in these environments be part of the change and lead the effort to get that change, be able to articulate it, identify the priorities. And they are a remarkable source of support, of course, for each other.

There are two premier reentry organizations in New York City, Fortune Society and the Osborne Society. Almost everyone who works at each institution has lived this experience, and it's from the very granular, what Ms. Burton was describing as when people come home, to physically move them, move their boxes from one place to another.

One of the wonderful parts of being here is that I reached out to a number of women who I've represented who are outside. And let me be clear, reentry is rough. It is rough and it stays rough, for many of the reasons that Ms. Burton has said. And they understand that. They've
experienced that. But they are remarkably resilient.

The term "gender-responsive" has been subject to some criticism, to the extent that it implies that these women are weak or, because of their history, they are excessively vulnerable. They have needs, but they are amazingly strong and amazingly resilient.

Some of the things that they have been through, and then, some of the contributions that they turn around and make are really, really remarkable. So, that's what I would recommend, and I think that's the hope.

CHAIR LHAMON: Thank you.

Any further questions from my -- Commissioner Adegbile?

COMMISSIONER ADEGBILE: For whomever wants to take this one, I've heard a lot of things today that I think are shocking to people, even though they're probably commonplace to the experts. We've heard that people are sentenced to incarceration because it's the best opportunity for psychological care or drug treatment. We've heard that, once incarcerated, people are sentenced to solitary confinement, in part, because of their
psychological condition and the prison is worried that they may be a threat to themselves or somebody else. And I guess we've heard, also, that sometimes prison for some people seems like the best opportunity to get an educational opportunity.

So, we've thought about, a lot about what it looks like once you're in there. We've thought about trying not to come back and what the transition looks like.

But let me ask this question: what is the best example of data, whether it's economic or through some other metric, of how the investments on the front end to create life chances that don't lead to the path of involvement in the criminal system would ameliorate a lot of these things that we're talking about? Is there data? Are there studies that show that front-end investments in providing for the needs of our people is a better approach than what we're talking about today?

MS. DIGNAM: There is some data. And again, the decision by Judge Gleeson from the Eastern District of New York that I cited in the material collects a lot of those programs and a lot of the data. So, there are now pilot programs, both on the front end, pretrial diversionary
programs, and on the back end in several Federal District Courts. I think the last count was 16.

My students, for example, are now participating in something for reentry for people, subject to supervised release, where we go to court every two weeks, and people come in and they talk to a federal appellate judge about how they're doing. And he problem-solves with them in real time and refers to the many lawyers who are sitting in the courtroom and says, "Well, they can maybe help you negotiate your tickets."

I am very hopeful we can do some of this. My law students are working very hard at it. But they have similar programs on the front end. They're in Philadelphia. They're in the Eastern District of New York. They're in the District of Connecticut.

This opinion pulls together a lot of those resources, and I think is a good place for you to start.

COMMISSIONER ADEGBILE: Thank you.

MS. NEY: I wasn't sure if you were asking a question about prevention or alternatives to incarceration.

COMMISSIONER ADEGBILE: I actually was
starting back further on prevention, because we may
as well start it at the earliest point --

    MS. NEY: Right.

    COMMISSIONER ADEGBILE: -- to the
extent that some of these things that are
manifesting themselves --

    MS. NEY: Sure, sure.

    COMMISSIONER ADEGBILE: -- or grappling
with --

    MS. NEY: It only makes sense. I'm not
aware of many studies that would comprehensively
say taking a prevention approach will keep people
out of prison. I think we see examples of people
who are raised in families of privilege who end up
in prison, and we see people who are in
impoverished communities who don't end up in
prison. There's some part of resiliency in that
that I think is a big contribution.

    I think we have seen some programs, the
kind that you describe, which I would cast as
alternative to incarceration kinds of programs
which are very successful. We know from the
research that doing treatment in the community gets
a better recidivism result than doing treatment in
prison. So, I mean, we do have some research that
points us in the right direction. We have lots of good research about Head Start Programs. I mean, again, in these areas of prevention, I think we have great studies and research that tells us what we need to do, if we are willing to do it. I would put a Head Start Program on every block in every city in this country; for example, if we were interested in doing prevention in a way that would take care of people, for example.

MS. STILL: Two of the programs that we ran, alternative sentencing programs, were women with children up to six years of age; could basically live in a program in the community that was specifically built and a lot of attention paid to the environment, the physical plant. There was not only a child care, but a Head Start Program right onsite. And the recidivism rate for that program was 12 percent as compared to over 60 percent, because these women had drug issues and drug sentences.

And as California revised its drug laws, the population that had access to those programs basically disappeared. And so now, the programs don't exist, and that type of program was not created at the local level, at the county
level. So, sometimes there are good intentions to try and reform, like with some of the drug laws, but, then, it takes these critical services that the women need, and it really not only helped them, but helped their children.

I'm putting my Chief Probation Officer hat on for the juveniles. You know, truancy, it starts with truancy. You can look back as soon as second grade and you can see patterns exist. If we invested and we basically provided support to the families to keep the youth in school and, also, to help the families through whatever their issue was, and family counseling, some financial support, wraparound services, it makes a tremendous difference.

CHAIR LHAMON: Commissioner Narasaki?

COMMISSIONER NARASAKI: One of the things that has struck me in the four years that I've been on the Commission is how almost every issue that we look into, there's always a huge mental health component to it. And I'm wondering if anyone has been doing research. Because we heard some witnesses mention today even that the police and the courts end up putting people in prison rather than in mental health places where
they can improve their mental health because they don't exist.

And I've always thought that would be a great place for the right and left to join forces and all demand that this country actually face this issue of mental health and what are we going to do about it.

Is there anyone trying to measure that, how many people are ending up in prison who really should be in substance abuse or mental health facilities instead?

MS. NEY: Most of them. Most of them.

COMMISSIONER NARASAKI: We have a lot of testimony about how many women have mental health issues. I'm just wondering if anyone has added up the cost. If we did this instead of this, would we have a better outcome and would we be actually saving money and improving everyone's -- improving the whole community?

MS. NEY: So, there's a big investment going on to train all officers in crisis intervention, for example. There are a number of local communities that are establishing crisis intervention programs for the express purpose of not criminalizing mental health issues. Those
programs are highly successful, as are specialty courts that deal with mental health individuals. So, it's a structured way of keeping them in case management and on medication, should they need it, and out of a prison system.

So, I'm not aware of any of those programs that are failures. Most of them are highly successful. But, again, it can be a costly -- I can't say that community programs are cheaper than prison programs. If you do them the right way, they will probably be just as expensive, but I think in the long run the benefits are greater.

COMMISSIONER NARASAKI: Yes. I was talking to some police friends of mine who -- a former police chief who said that they worked on these diversionary programs, they taught their officers what to look for, but, then, the officers had no place to actually take --

MS. NEY: Yes, and some hospitals will not take them. They will take them for 24 hours. They will medically certify them. They will release them. So, yes, there are not very many resources.

I just came back from a county jail, a
county in the Midwest where there's literally not one psychologist for juveniles in the entire county, for any part of the population, period. And that speaks to their ability to do anything.

MS. BURTON: The Corporation for Supportive Housing has been doing some national work that's diverting people from -- they call them "high users" -- into permanent supportive housing and scattered site housing, and out of mental health, out of emergency services and jails. So, The Corporation for Supportive Housing I believe would have the data that you're looking for.

CHAIR LHAMON: With that, we are going to close our panel just on time.

Thank you very much for a terrific panel again today.

We will take a break, recess until 5:00 p.m., for the open public comment period.

All participants in the open public comment period should report back at 4:45 p.m., and we will see you then.

(Whereupon, the foregoing matter went off the record at 3:59 p.m. and went back on the record at 5:00 p.m.)
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,
which will be measured by this timer. And please notice the box with the three lights. When the light turns from green to yellow, that means one minute remains. And when the light turns red, you should conclude your statement. And if you do not conclude, I will cut you off.

If you have not finished or would like to submit additional comments, we encourage you to do so by mailing or emailing your written submissions to us at the addresses provided on your information sheet, on Monday, March 25th, or by Monday, March 25th, 2019.

While waiting for your turn, please sit in the numbered chair that corresponds to your ticket. And in order to reduce time between speakers, we would ask that you move forward to the microphones before the speaker in front of you has finished.

Sign interpreters will be signing during the presentations.

And if you have questions, please ask a staff member.

Some of our Commissioners do have flights to catch. And so, if somebody has to step up to leave, it is not a comment on your comment,
and we apologize for the interruption.

So, with that, I open for our first public comment presenter.

MS. FOX-RICHARDSON: Me. Good evening, Commissioners. I can't begin to tell you how honored I am to be here with you today. Thank you for your time and consideration.

My name is Sybil Fox-Richardson. My friends calls me Fox-Rich. And I bring you greetings from the best city in the world, New Orleans, where I work with our State of Louisiana, along with other stakeholders, such as Louisianans for Prison Alternatives, Southern Poverty Law Center, and VOTE, Voice of the Experience, as well as the National Council of Incarcerated and Formerly Incarcerated Women, to bring about criminal justice reform in our State. And we are currently leading the nation in our efforts with the legislation we just passed in 2017. But, needless to say, we have a very long way to go.

My comment to you today would be to say that the first thing that we must do is determine that a thing must be done. And when we determine that something must be done, then we shall find the way. We must end the incarceration of women and
girls in the United States of America. We must.

Once we come to that understanding, then we shall find the way. It's kind of like paying an electric bill. Once you know that it needs to be paid, you scrape up the money and get it done.

For me, I am the mother of six sons, a formerly incarcerated woman, and the matriarch of my family, who has served 21 years and four days in Louisiana's criminal justice system.

One of the things that I can say to you is, in my time in prison, I had never met someone that could not read or write until I got to prison, and that's where I found them. So, education is definitely a key component in our system that we have to address.

But the primary thing that I want to discuss with you is about a bill that we are moving through the National Council across the country, and that is the Primary Caretakers Bill. We have got to make sure that when women have children that are under the age of 18 years old, that by any means necessary we keep that mother with that family. To take a man out of the family destabilizes a family. But in Louisiana, where the
The majority of people in our system are people of color, when you remove a woman of color from a family, you disseminate the family.

I had four children when I was sentenced to seven years in prison. I left them with my mother, fortunately, who was able to provide care for them. My husband had been sentenced to 60 years as a first offender in a crime that nobody received medical treatment in, and they wanted to give me 40 years in prison.

So, I’ve been home from prison now for 17 years, recently reunited my family. My husband came home through clemency. And we were able to maintain our family, which is not the case for most people. We have to make sure that we keep the women with their children.

In slavery in Louisiana, in 1832 to 1865, when a woman incarcerated had a child, it stayed in prison with the mother until it was 10 years old. Are we not more humane?

CHAIR LHAMON: Thank you very much.

To our next speaker.

MS. BENEDICT: Hello. My name is Alyssa Benedict, Executive Director of Core Associates.
My testimony is a call to action to eliminate harmful disciplinary practices in women's prisons and promote the development and implementation of new systems that align with the research on women we've heard about today.

Disciplinary practices in women's prisons are violating basic psychological principles and they're antithetical to criminal justice goals. They're placing unnecessary financial burdens on departmental and state budgets, increasing the length of women's incarceration, and contributing to adverse outcomes. We must name and elevate this problem, amplify the voices in women, and take collective action immediately.

While ineffective for all human beings, discipline approaches in prison have unique and disproportionate impacts on women, most of whom are survivors of trauma and the primary caregivers of dependent children. They restrict contact with family and key relational supports, trigger trauma, and sever women from stabilizing relationships and connections. The disciplinary sanctions that women receive in the name of justice deepen their wounds and create new scars that they bring with them into
their communities upon release.

I began to advocate for a discipline reform in women's prisons many years ago. As a federal partner for the National Research Center on Justice Involved Women, I authored the nation's first discipline policy guide with the help of Becki Ney and Andie Moss. As co-founder of the Women's Justice Institute, I have helped cultivate some of the nation's most powerful, quantifiable evidence on disciplinary injustice.

In fact, our groundbreaking work and research, including our implementation of the nation's most comprehensive women's prison assessment, spurred and substantively shaped a 15-state investigation by The Chicago Reporter, NPR, and the Medill School of Journalism that was published in 2018. You heard about that today.

The Women's Justice Institute's cutting-edge research has revealed the following important realities:

Women are disciplined at higher rates than men and receive harsher penalties, often for non-violent infractions.

Women of color and those who identify as LGBTQ suffer unique injustices within the
They're uniquely problematic for women's suffering with mental health challenges, including PTSD. In fact, these practices worsen mental health challenges and create ones that didn't exist before incarceration.

They're increasing women's length of imprisonment and taxpayer costs.

They include mandatory sentences for repeated infractions that encourage things like stacking of charges and discipline, which has serious impacts on women's earned good time, limits their access to programs, limits visits with children, and prevents them from having early release parole opportunities.

They're fortified by grievance processes or staff intimidation. Retaliation and coercion prevent women from accessing their rights as human beings.

When women speak about their experiences, they're often not believed and engage in survival behaviors for which they're punished.

In the matrix of criminal justice system reform, disciplinary practice in the women's prisons around this country represent a human
rights crisis.

This testimony is a call to action that includes five steps: each state should assemble a team to explore disciplinary trends in women's facilities; develop a plan to provide staff with immediate training and coaching; actively engage directly impacted women.

CHAIR LHAMON: Thank you very much. We'll need to take the rest.

MS. BENEDICT: Thank you.

CHAIR LHAMON: Thank you.

Next speaker.

MS. SEVCENKO: My name is Catherine Sevcenko, and I am the counsel for the National Council for Incarcerated and Formerly Incarcerated Women and Girls.

The National Council is the only national organization that was founded and is run by incarcerated and formerly incarcerated women and girls. You may remember us as the voice of the women in prisons who drafted part of the Dignity Act, which has been mentioned many times today. Our goal is unabashedly to end the incarceration of women and girls, but, in the meantime, we also work to address the conditions of confinement for those
who are currently incarcerated.

We would like to ask for you to continue your critical oversight and engagement with this issue, but we also invite you to go beyond re-imagining prisons and ask you to re-imagine the criminal justice system itself. Please explore innovations, such as bail funds, participatory defense, and statutes that keep primary caregivers out of prison and at home with their children.

If they were here, the members of the National Council would speak about the difference between what prison officials say and how the system really works. As Ms. Burton did, they would tell you how all the problems that we have learned about today affect the lives of women, their children, and their families. The recent scathing report of the Department of Justice OIG on the conditions of incarcerated women confirms the lived experience of National Council members.

We are grateful for your work and, in particular, for the care that you have used in the language that you have used today, so as not to re-traumatize women who have experienced incarceration.
But any reform is useless if it is not implemented well. And the FIRST STEP Act is the latest example. The BOP claims it is implementing the law, but the view from the prison bunk is very different. And I would like to share with you now some actual responses from a survey we have received from women across the country who are inside.

"The prison is not helpful with any information about the FIRST STEP Act. They aren't correctly applying credits, nor communicating with us about when or how it will affect any of our sentences. They seem to act as if it is not official or real at this time. Whenever we ask the warden or any high administrator about the FSA, they either don't know or they've never heard of it, or they say, 'It doesn't apply to you.'"

So, we urge you to continue educating the public about the disastrous condition in American prisons and to make sure that the promises to the incarcerated are kept.

CHAIR LHAMON: Thank you.

MS. SEVCENKO: Thank you, and free her.

CHAIR LHAMON: Thank you.
MS. CHEEMA: Puneet Cheema, on behalf of Lambda Legal, the nation's oldest and largest legal organization dedicated to the rights of LGBT people and those living with HIV. We've represented incarcerated transgender women in leading impact cases affirming their rights.

Our comments today cover three areas of concern for transgender women in prison: housing placement, protection from sexual assaults, and access to necessary medical care.

First, transgender women are too often housed in men's facilities. But it requires facilities to give serious consideration to transwomen's views if they wish to be housed consistently with their gender identity. However, many facilities completely disregard this and place them in men's facilities based on their sex assigned at birth. This subjects them to intense sexual harassment and risks of sexual assault.

Just such a case in North Carolina made the news today. Ms. Kanautica Zayre-Brown has surgically transitioned, but has been placed in men's dorm and subjected to daily harassment, according to news reports, despite repeatedly requesting to be housed in a women's facility.
To mitigate the risk of violence against transgender women in men's facilities, many facilities, then, place them in protective custody, effectively long-term solitary confinement. In addition to negatively affecting their mental health, it makes it difficult for transwomen to access education, training, recreation, employment, and other services that result in good time credit, ultimately causing them to serve more time in custody. Transwomen should be afforded the option to be housed according to their gender identity or wherever they feel and are safest.

Second, more must be done to protect transwomen from sexual violence. The rates of sexual assault against incarcerated transwomen by both other inmates as well as staff are horrific. A 2009 survey of California prisons estimated that trans-people are 13 times more likely to be sexually assaulted. The Bureau of Justice statistics puts this rate at 10 times more likely.

Passion Star, a Lambda legal client, was housed in six male facilities in Texas, where she was identified as feminine, raped, and forced to submit to undesired sexual acts to escape violence. She filed dozens of grievances,
complaints, and requests to be placed in safekeeping. But, instead of taking measures to protect her, officials told her to fight or stop acting gay if she did not want to be assaulted. Eventually, after years of litigation and advocacy by Lambda Legal on behalf of Ms. Star, she was released on parole.

More must be done by facilities to prevent sexual violence against transwomen, to thoroughly investigate it when it occurs, provide medical service to survivors, and hold perpetrators accountable.

Finally, incarcerated transwomen must be provided necessary access to medical care, as required by the Eighth Amendment. While courts, the medical community, and most correctional facilities now recognize gender dysphoria as a serious medical condition, facilities continue to limit the type of medical care that is available to transwomen and remain unwilling to provide transition-related surgeries when they are medically necessary.

Facilities also deny transwomen access to gender-appropriate clothing and personal items, refusing them the ability to groom themselves in a
manner consistent with their gender identity. This can lead to daily humiliation and exacerbate gender dysphoria, harming their health. And they also expose facilities to liability when these items are medically necessary to treat gender dysphoria.

State prisons and jails must do more to ensure they are not violating transwomen’s rights and endangering them through inappropriate housing decisions, by --

CHAIR LHAMON: Thank you.

MS. CHEEMA: -- failing to protect them from sexual assault --

CHAIR LHAMON: Thank you.

MS. CHEEMA: -- and limiting their access to medical care.

CHAIR LHAMON: We very much appreciate this public testimony.

We understand that there is one other person who is traveling. So, the Commission is going to recess and we will stay here until 6:00. And if the person gets here, we'll take that testimony as well.

Thanks very much.

(Whereupon, the above-entitled matter went off the record at 5:14 p.m. and resumed at
CHAIR LHAMON: So, we're returning from recess.

Thank you for your extraordinary efforts to come for public comment. I'll just share the instructions for public comment.

Given some of the topics that can come up with regard to women in prison, I reiterate for public comment purposes that, since 1983, Congress has prohibited the Commission from taking in any information about or talking about abortions. So, please tailor your remarks accordingly. And if necessary, I will enforce that statutory restriction.

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 honored and eager to hear it, and we will not take your short time with questions or with dialog.

You'll have three minutes to speak, which will be measured by a timer. And please notice this box with three lights here. When the light turns from green to yellow, that means one minute remains. When the light turns red, you
should conclude your statement, and otherwise, I will need to cut you off.

So, we look forward to your testimony. Please proceed.

MS. PRICE: Good evening. Thank you so much for waiting for me. They don't call me "Grace" for nothing. Thank you so much.

I am Kelly Grace Price from the Close Rosies organization. We're a group of survivors of the Rose M. Singer Center, the all-female jail on the notorious Rikers Island jail complex in New York City. I thank you for holding this hearing and for allowing me to appear in front of you.

I want to address my comments specifically to PREA, the Prison Rape Elimination Act, in New York City jails. I know that this particular hearing is engaged around women and girls in prisons, but, of course, you can't get to prison in this country until you are in jail first. And I specifically have one ask of the Commission, and I'll get to that.

I ended up on Rikers Island as a survivor of domestic violence. My batterer was connected to the NYPD, and the Manhattan District Attorney used him as a confidential informant to
sweep through upper Manhattan and make all kinds of big RICO gang busts. You may or may not be familiar with the person who has the title of Manhattan District Attorney, Cyrus Vance. He is one of the main leaders in the national anti-gun movement.

So, a lot of people like me end up on Rikers Island. A lot of innocent people end up on Rikers Island because, as women, we're caught between the Scylla and Charybdis of circumstances that take us there, even though we absolutely are not guilty of the crimes committed. In fact, you should know that the people that end up on the Rose M. Singer Center on Rikers Island, the women and girls, only 28 percent of us eventually take a guilty plea or plea bargain out. So, basically, that means less than 30 percent of us are actually guilty in the first place. This is not a place where rape and sexual assault should run amok. We should not be re-persecuted as innocents when we're put in this jail.

For the past seven years, I have been advocating to implement PREA in our city jails, specifically on Rikers. And our oversight board, the Board of Correction that is predominantly
appointed by our Mayor, has failed miserably to implement PREA.

After much community to and fro, in the summer of 2016 a PREA rule was proffered forward. It was voted on to much dissent in November of 2016, to be implemented beginning in January of 2017. To date, of the over 100 different aspects, the fachay of different rules to be implemented, cameras, reporting, investigations, staffing, less than 10 percent of them have been implemented. There's absolutely no oversight.

And I know that the Commission has the power to convene hearings, to subpoena leaders. And I'll provide much greater at length written testimony, but I ask this Commission to start with New York City. This is the place where NOW was born. This is the place where my grandmother ate pizza on the steps of City Hall as a suffragette. We need to protect our most vulnerable citizens, especially if we're innocent.

Thank you for listening to me. Thank you for having me.

CHAIR LHAMON: Thank you. Thanks.

And with that, we are closing this, the record, for the day. Thank you very much.
(Whereupon, at 6:04 p.m., the above-
entitled matter was adjourned.)