

1 There is a profoundly ingrained culture
2 in TDCJ that prisoners who claim rape are trying to
3 manipulate the system, and it's going to take a
4 profound and sustained effort to change that attitude.
5 And I believe that the work of this Commission is
6 going to be a major step in finally changing that
7 attitude.

8 CHAIRMAN WALTON: Thank you very much.
9 Thank you all for your testimony.

10 Mr. Austin, a couple of statistics I
11 wanted to query you about. Because sometimes when
12 statistics are cited, if there is no explanation given
13 for those statistics, they can leave an impression
14 that may be false.

15 You said that the greatest number of
16 perpetrators were black men and the greatest number of
17 victims were white men. And that would maybe suggest
18 to some that black men have a greater predatory
19 propensity for engaging in violent sexual behavior.

20 Let me just ask. What is the racial
21 makeup of the -- as far as males are concerned that
22 you looked at, of the prison facilities at issue? I
23 mean, is there a disparity in the number of black
24 males as compared to white males in the facilities?

25 DOCTOR JAMES AUSTIN: Yes.

1 CHAIRMAN WALTON: And is that a factor
2 that conceivably may have an impact? I mean, if the
3 reverse were true, is it quite possible had you would
4 have more black men, because race is still an issue in
5 America, being raped, as victims, as compared to the
6 reverse?

7 DOCTOR JAMES AUSTIN: Yes. Let me
8 clarify what the statistics are -- what they're simply
9 saying, if you look at the victims, they are --
10 victims are disproportionately white and the
11 predators -- alleged predators are disproportionately
12 African-American. The percentages are also higher for
13 the whites than for the base -- when you get the base
14 rate for whites and for the base rate for the
15 African-Americans.

16 This is something that's been
17 discovered in a lot of the previous research on sexual
18 assault. It has nothing to do, in my opinion, with
19 any kind of natural propensity for whites to be
20 victims or blacks to be predators. It has to do with
21 a lot of other issues which we talk about in the
22 report. And so I'm not trying to make that point at
23 all. It's just -- but that is the fact, that they are
24 disproportionately of this different racial makeup.

25 CHAIRMAN WALTON: No, I wasn't

1 suggesting that you were suggesting anything. I just
2 wanted to bring out that there are reasons why the
3 disparity exists that has nothing do with the color of
4 someone's skin.

5 DOCTOR JAMES AUSTIN: That's correct.

6 CHAIRMAN WALTON: Let me just ask. You
7 also had indicated that individuals who go into
8 protective custody sometimes, who have victimized, end
9 up being the victimizer.

10 DOCTOR JAMES AUSTIN: Right.

11 CHAIRMAN WALTON: Does that mean when
12 we put individuals into protective -- well, let me
13 just ask.

14 When people were put into protective
15 custody, was there any kind of classification
16 assessment made as to what their propensity was to
17 victimize?

18 DOCTOR JAMES AUSTIN: I would -- I
19 would have to say, certainly nationally that doesn't
20 happen. And I would probably say, in Texas that's not
21 happening, also.

22 CHAIRMAN WALTON: So a decision was
23 just made, well, these individuals were either at risk
24 or were victimized, they're put into protective
25 custody, but there is no assessment made as to whether

1 there should be any type of delineation of where
2 people should be put there to avoid victimization?

3 DOCTOR JAMES AUSTIN: Well, there is
4 probably some delineation in terms of a custody
5 situation, but in terms of their propensity to commit
6 sexual assaults in protective custody, that's -- I
7 don't think that's happening in Texas or any other
8 correctional system.

9 The point here that we were making --
10 it was an interesting finding for us, because you
11 think of protective custody being a safe place. And
12 what is happening, I think, clearly is that people
13 that become victimized from sexual assault, when they
14 get put into protective custody where the internal
15 controls may not be as strong, some of that -- the
16 same thing we see in alleged people that have been
17 victimized as children, whatever, turn that -- that
18 aggression onto other people at some point. And so I
19 am kind of theorizing what is going on, but I think
20 it's pretty evidence that just putting someone in
21 protective custody is not going to solve the problem.
22 Correctional officials need to keep track of who is in
23 their protective custody units and make sure that
24 people that used to become victims, not become
25 predators and preying on other protective custody

1 prisoners. It's clearly what is happening in Texas.
2 It's clearly happening there, so that's why we pointed
3 it out.

4 CHAIRMAN WALTON: The other thing, back
5 to the first issue because I'm interested in that.
6 Regarding those white males who were victimized. Do
7 you know if in the units they were in where that
8 happened that they were disproportionately in the
9 minority?

10 DOCTOR JAMES AUSTIN: We don't know
11 that.

12 CHAIRMAN WALTON: Okay.

13 COMMISSIONER AIKEN: Just to piggyback
14 on you in relationship to protective custody. At
15 least my experience tells me and shows me that
16 protective custody status, the motivation for and the
17 justification for it has many different meanings. You
18 can have an individual that has so many poor social
19 skills that they couldn't get along with fifth
20 graders, so to speak, and they could certainly not
21 survive in an adult prison environment. And then you
22 have the predator gang leader or gang member that
23 denounced or turned State evidence against another
24 gang member, and you have to put them in the same
25 protective custody. And then you have the retarded

1 inmate that you can't stick anywhere else but
2 protective custody. All of these people are in the
3 same housing unit, and they are there for very
4 different reasons, but they're in the same status. Am
5 I in the right ballpark?

6 DOCTOR JAMES AUSTIN: Yes. Yes, you
7 are. And I just want to add what this points out also
8 in the -- we're talking about the information system.
9 If you're an officer and say you're managing a
10 protective custody unit. In the data system when we
11 saw it, you could not look at what the allegations
12 were that happened at other units. You can only look
13 at the allegations that are occurring in your unit.
14 So you're missing -- because a lot of these people are
15 being transferred around in response to the
16 allegation, so the data is not following the person.
17 And this really gets down to management, basic
18 management opportunities. You have to have the whole
19 picture, not only of who the victims, who the predator
20 is, but also the staff that have been involved, et
21 cetera. So that's something that -- again, this to me
22 is a simple fix. It's just opening up the computer
23 screens to people that need to have access to it so we
24 can watch all the information. And the more we're
25 watching all of the information, I think the better

1 off we're going to be.

2 COMMISSIONER AIKEN: So you won't have
3 collisions, so to speak.

4 DOCTOR JAMES AUSTIN: Right.

5 COMMISSIONER AIKEN: And the second
6 point I want to raise is, I was listening at your
7 recommendations as well as -- of course, I have had
8 vast experience with you with correcting systems that
9 were deficient. Your recommendations don't have big
10 price tags to them. Is that correct?

11 DOCTOR JAMES AUSTIN: Right. The two,
12 to me, that are essential is the checklist on everyone
13 coming into the system. This does not cost a dime to
14 do. It's simply a one-page sheet, you see it, it just
15 needs to be filled out, and that gets everyone
16 thinking about the process.

17 The second thing is, I think every case
18 manager, every mental health person, any time there is
19 a structured event, there should be three or four
20 questions being asked every time of that prisoner.
21 The responses should be recorded. It's a natural pull
22 that's going on, and you can report this, you know,
23 week in and week out of all the interviews we were
24 conducting. You know, we're picking up 20 percent of
25 the prisoners are saying they're being threatened,

1 whatever it is. So this just should be what we call a
2 routine activity. It doesn't cost a dime to do.

3 COMMISSIONER AIKEN: Okay. And getting
4 to your points in relationship to the level of
5 emphasis -- and I'm not talking particularly about the
6 Texas system. I was talking about prison
7 administration, or correctional administrations
8 generically. Your classification system is the base
9 for factual information in relationship to the
10 protection and safety of inmate populations. Is that
11 a fair assumption here? And oftentimes we have
12 discussed, Doctor Austin, and I have seen, is there is
13 a misconnect between the classification information
14 system getting to policymakers.

15 DOCTOR JAMES AUSTIN: Right.

16 COMMISSIONER AIKEN: And policymakers
17 listening to it and understanding it, they're making
18 appropriate decisions based on that factual, validated
19 information source. Is that correct?

20 DOCTOR JAMES AUSTIN: Yes.

21 CHAIRMAN WALTON: And that when there
22 is a misconnect, there is a higher potential for
23 sexual assault and critical events to take place
24 because you're not listening to your own validated
25 system. Is that correct?

1 DOCTOR JAMES AUSTIN: Right.

2 COMMISSIONER AIKEN: Okay. And the
3 last point is this: I haven't heard testimony yet in
4 relationship to having the proper level of emphasis to
5 sexual aggression and sexual assaults in confinements
6 institutions. You know, I don't see or have not seen,
7 on a regular basis, the response, the level to an
8 allegation of sexual aggression or assault, especially
9 when I compare it when information is generated as to
10 someone has found a way to escape from this high
11 security prison. When information like that comes
12 about, it goes through the chain of command like
13 wildfire and people take decisive actions to make sure
14 that we get ahead of that, to keep it from happening.

15 And does anyone have any suggests in
16 relationship to bring the issue of sexual aggression
17 and predator sexual behavior in a prison confinement
18 setting to that same level of emphasis? And I don't
19 want to hear this. Write a memo.

20 DOCTOR JAMES AUSTIN: Well, I just want
21 to -- on that point, my biggest concern about the
22 Texas system is the low rate of substantiations.
23 Because I've done a lot of work looking at
24 substantiation rates, and they need to be -- they
25 should be higher or there is a lot of false reporting

1 going on. It's one of the two. And so I think that
2 is a concern, and when you look at the reasons for the
3 lack of substantiation going on, which is the fact
4 that the prisoners for some reason don't report it for
5 some days or weeks after it's occurred, the fact that
6 we can't get the evidence. I think Ms. Winter has
7 talked about the issue of -- and Lisa about
8 investigation protocol. There is an investigation on
9 paper and there is an investigation when you carry it
10 out, and I've seen, you know, the ability to interview
11 people, you go down and you find them, you keep on
12 finding them until you get a resolution. That kind of
13 an aggressive investigation, it looks a lot different
14 in the real world than it does on the paper world. So
15 I think -- I think that is what is needed. I think
16 Texas has made some progress, but I also feel that --
17 not only Texas, but all the other states, have a long
18 way to go still, not just on sexual assault, but
19 running safe prisons. That should be the point,
20 running safe prisons.

21 COMMISSIONER AIKEN: So in other words,
22 and I may be too simplistic, but we've got to address
23 these kind of issues the same way we address looking
24 for a lost screwdriver. And is it within the realm of
25 possibility that incidents do occur, critical

1 incidents do occur within the correctional setting
2 that are labeled something else that have something to
3 do with sexual aggression. For example, stabbings or
4 murders or suicide or overdose, or even attacking
5 another inmate, that there is a probability at least
6 that this incident went down as a fight when in
7 actuality the fight was over some type of sexual
8 misbehavior. Is that reasonable?

9 MS. MARGARET WINTER: There are three
10 things that really struck me about the level -- about
11 the question of corroboration and of investigation.
12 There are stereotypes that are so profoundly held
13 that, for example, not only in the Roderick Johnson
14 case, but in many cases, if a black prisoner claimed
15 to have been raped, especially if a black homosexual
16 prisoner claimed to have been raped, the assumption
17 that is apparent in the investigative reports
18 themselves is that that cannot be because black
19 prisoners rape, they don't get raped. And
20 furthermore, homosexuals are asking for it. So right
21 there, if one were to do an audit, we read -- we
22 studied hundreds of investigative reports and that is
23 the kind of pattern that we saw over and over again,
24 of racial and -- you know, sexual preference
25 stereotyping.

1 We also saw the screwiness of
2 investigations in which, time after time, witnesses
3 who were identified by the victim were not interviewed
4 to preserve the integrity of the investigation, quote
5 unquote. And then the victim was offered no
6 protection because he could not substantiate his case.

7 I -- a third example I would like to
8 give is from the OIG investigation, a document that
9 thick, from the Roderick Johnson case. In which, when
10 we finally got a hold of that report, which TDCJ
11 released with great fanfare to the press, what we --
12 we read it and we discovered that it was -- it was --
13 it was Alice in Wonderland. That it was filled with
14 witnesses who had seen that Roderick Johnson was being
15 victimized. We went to the prison. We interviewed
16 these witnesses. And at the risk of their own life,
17 they testified that they had seen him being raped by
18 the gangs. And some of them had even been involved.
19 They had nothing to gain by this and everything to
20 lose.

21 So I think the thing that has come up
22 again and again and again of utterly independent
23 oversight, and of auditing these documents, and of
24 making them available. This stuff has to be chased
25 down, these reports. They're not centrally recorded.

1 It was like chasing a moving target to find this
2 information. And those themes are really what it's
3 all about, the independent oversight and the
4 transparency.

5 COMMISSIONER AIKEN: Let --

6 CHAIRMAN WALTON: We have got one
7 minute.

8 COMMISSIONER FELLNER: One sentence.

9 Is there any evidence that anyone else
10 has reviewed these incident reports and seen what the
11 deficiencies are and what happened and transferred it
12 into policies so it won't again, or transformed it
13 into new design or renovations or training or anything
14 of that nature?

15 MS. MARGARET WINTER: I don't believe
16 that they are studied. I think they're destroyed
17 under a regular document destruction policy after a --
18 quite a short time. That may have changed --

19 COMMISSIONER AIKEN: And it's not a big
20 price tag on that, to do it, I don't think.

21 MS. MARGARET WINTER: No.

22 COMMISSIONER AIKEN: And has any policy
23 been established, if a policy has been established,
24 Doctor Austin, where inmates are not allowed to visit
25 other inmate's cells during this 6:00 p.m. to 6:00

1 a.m., would that possibly would have an impact?

2 DOCTOR JAMES AUSTIN: Yeah. The trick
3 there would be, the officers in those units know who
4 the potential predators and victims are in their unit
5 that day and are instructed to not -- you know, keep
6 an eye on them and to watch them and make sure they're
7 restricted in their movements. Again, that's the kind
8 of data that have to go down to the unit level.

9 COMMISSIONER AIKEN: And there is no
10 price tag on that either.

11 DOCTOR JAMES AUSTIN: No, sir.

12 CHAIRMAN WALTON: Commissioner Puryear.

13 COMMISSIONER PURYEAR: I'll try to be
14 real quick. Just a couple of questions, Doctor
15 Austin.

16 First, on a finding of dorms versus
17 cells, is there any -- did you account for this likely
18 classification difference between inmates that are
19 housed in dorms versus housed in cell units, or is
20 there any differences?

21 DOCTOR JAMES AUSTIN: There is some,
22 but we looked at the differences in classification --
23 and that didn't predict -- in other words, we
24 controlled for the classification level.

25 COMMISSIONER PURYEAR: Okay. And still

1 found that there was this statistically different
2 disparity.

3 The second question is, with cells, I
4 think there is a conception that double celling
5 increases the likelihood of incidents like this versus
6 single celling. Is there anything in your data to
7 suggest that?

8 DOCTOR JAMES AUSTIN: No.

9 COMMISSIONER FELLNER: Did you look at
10 it?

11 DOCTOR JAMES AUSTIN: No.

12 COMMISSIONER PURYEAR: Is there --
13 but --

14 DOCTOR JAMES AUSTIN: I'm just
15 answering the question.

16 COMMISSIONER PURYEAR: Let me ask
17 another question, then. If most of the events occur
18 between 6:00 a.m. and 6:00 p.m. when largely, even in
19 a single-cell environment, the doors are going to be
20 open for free movement of inmates, do you still
21 confront the same risk in a cell environment, whether
22 it's a single cell or a double cell situation?

23 DOCTOR JAMES AUSTIN: The issue on
24 double cell, who are you double celling, that's the
25 issue.

1 COMMISSIONER PURYEAR: Right.

2 DOCTOR JAMES AUSTIN: So if you're
3 double celling properly, this will not be an issue.
4 If you're not double celling properly, then it becomes
5 an issue.

6 COMMISSIONER PURYEAR: Last question.
7 The issue of delay in forensic evidence as it relates
8 to the substantiation for the complaints that are
9 made. Were there any facilities that you looked at
10 that had yet implemented camera systems and digital
11 video recorders?

12 DOCTOR JAMES AUSTIN: No. Well, no.
13 That's -- some of them did. Some of them did, yeah,
14 but we couldn't -- I wasn't able -- there is not
15 enough to say, here is delays that are occurring with
16 digital recording systems and -- let me just -- can I
17 add something on the camera thing, just real quickly,
18 because I was involved in a major case in Louisiana
19 juvenile. And they had the best camera system in the
20 world. It wasn't until they started watching the
21 tapes every morning that we got the incidents to go
22 down.

23 COMMISSIONER PURYEAR: But if your --
24 in your investigation, I don't know if you found this,
25 in the facilities that had that system available, if

1 in the investigation, if time had lapsed such that the
2 rape kit would not be possible, the cameras might show
3 that the perpetrator -- the alleged perpetrator and
4 the victim were in a place where they might not should
5 have been?

6 DOCTOR JAMES AUSTIN: Or --

7 COMMISSIONER PURYEAR: You know, if
8 they were even checking.

9 DOCTOR JAMES AUSTIN: Right. Or
10 they're out of the view of the camera, too.

11 COMMISSIONER PURYEAR: Right.

12 CHAIRMAN WALTON: Commissioner Fellner.

13 COMMISSIONER FELLNER: Yes. We've got
14 planes to get.

15 I notice one of the points that
16 Margaret has been making repeatedly is not just that
17 there all these stereotypes and that those stereotypes
18 lead to a failure to respond. In your report, you
19 said that you did not think that there was
20 organizational indifference. But I want to establish,
21 you did not interview any inmates. Is that correct?

22 DOCTOR JAMES AUSTIN: Right. We were
23 prohibited from doing that.

24 COMMISSIONER FELLNER: From any surveys
25 of inmates?

1 DOCTOR JAMES AUSTIN: Not allowed to do
2 it.

3 COMMISSIONER FELLNER: Well, there
4 sometimes are -- well, that's something, it would be
5 great if you could send us some information on --

6 DOCTOR JAMES AUSTIN: Our original
7 proposal to NIJ included, we were going to go into the
8 cases and interview the staff and the inmates
9 involved, and we were told by the Federal government,
10 you cannot do that because of IRB restrictions.

11 COMMISSIONER AIKEN: Well -- because
12 then I don't know how you can make a finding about
13 organizational indifference if the victims of that
14 indifference aren't allowed -- haven't been able to
15 talk to you.

16 DOCTOR JAMES AUSTIN: Right. We were
17 talking to staff in general. You can talk to staff in
18 general, and that's in the report, we make that clear,
19 we talked to staff in general about their views about
20 prison rape, about the --

21 COMMISSIONER FELLNER: So they gave
22 the -- they said the right things. But I just want to
23 make clear that you did not really -- weren't able to
24 test the level of indifference or, to put it
25 positively, you weren't able to test the level of

1 rigor and care with which complaints were responded to
2 because you weren't allowed to talk to the people who
3 are making those complaints. That is correct?

4 DOCTOR JAMES AUSTIN: I take your
5 point, yes.

6 COMMISSIONER FELLNER: Okay. One other
7 quick question. You've mentioned in your report
8 that -- the problem with delay and, therefore,
9 forensic. But I noticed that 30 percent of the
10 people -- the incidents were reported the same day,
11 and yet only 11 percent had rape kits. So by your
12 data that is suggesting that in 20 percent of those
13 cases, even though they were reported the same day,
14 there was no rape kit. Do you have a sense of why?

15 DOCTOR JAMES AUSTIN: Off the top of my
16 head, no. I would have to go back and look at the
17 information. I can get back to you.

18 COMMISSIONER FELLNER: Okay. And I
19 would like to follow up you on the IRB and also, your
20 table 27 got mislabeled, and I'll show it --

21 DOCTOR JAMES AUSTIN: Okay.

22 COMMISSIONER FELLNER: -- point that
23 out. Great. Thank you.

24 DOCTOR JAMES AUSTIN: Thank you.

25 CHAIRMAN WALTON: Okay. We appreciate

1 your testimony. I'm sure it will be very helpful to
2 us as we proceed with our deliberations. If we do
3 think of other questions, we may get back in touch
4 with you and we'd appreciate if you respond to those
5 because that would be helpful.

6 So thank you very much for your
7 presence and your testimony.

8 The hearing is now adjourned.

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