

1 facilities rather than federal facilities.

2                   In conclusion, the greatest challenge  
3 the Navajo Nation faces is the continual increase of  
4 mandate of incarcerated inmates, which are hindered by  
5 lack of funding, lack of facilities, lack of manpower.  
6 Most importantly, with all these challenges, I commend  
7 my staff. And as I sit before you, our staff are very  
8 professional, providing the direct service to those  
9 that are incarcerated that no one has become  
10 victimized in our facility. It is not say that it  
11 will never happen, but without end, the environment  
12 does exist.

13                   Ladies and gentlemen, thank you.

14                   CHAIRMAN WALTON: Thank you very much  
15 for your testimony.

16                   Mr. Rivera, there were a number of  
17 reports you identified. I'm going to ask our staff to  
18 get in touch with you. Hopefully, we can identify  
19 where we can get those reports --

20                   MR. GUILLERMO RIVERA: Two  
21 specifically -- two specific reports that you probably  
22 will be interested in. One with the gap analysis,  
23 which was --

24                   COMMISSIONER FELLNER: Gap?

25                   MR. GUILLERMO RIVERA: Gap Analysis

1 report, which was done after surveying the majority of  
2 the facilities out in Indian Country, which will give  
3 you a -- a better picture of the staffing pattern in  
4 detention facilities in Indian Country.

5                   The other one is the Shubnum report.  
6 The Gap Analysis is completed, so we can provide that  
7 to you upon request. The Shubnum report is in the  
8 preliminary stages of being finalized. Once it has  
9 gone through the Director, Pat Ragsdale, it'll be open  
10 for public information, so --

11                   CHAIRMAN WALTON: Do you have any idea  
12 when that will be completed?

13                   MR. GUILLERMO RIVERA: I -- we believe  
14 that we have the preliminary report already, and I  
15 believe it has been submitted to Mr. Ragsdale. So  
16 once he reviews it, he is also going to be going --  
17 utilizing that for justification for additional  
18 funding in the future. I would think maybe a month,  
19 two months at the most.

20                   CHAIRMAN WALTON: Considering the  
21 unique relationship that exists between Indian tribes  
22 and the Federal government and the matter of  
23 sovereignty, what do you all think is the best thing  
24 that we can do or the things that we could do as a  
25 Commission as far as recommendations are concerned

1 that would best assist addressing the problems that  
2 relate in detention facilities on Indian Country?

3                   PROF. KEVIN GOVER: Two things occur to  
4 me, Mr. Chairman. The first is to -- to suggest that  
5 we need much more information about the scope of the  
6 problem in the Indian jails. I was looking at the BJS  
7 reports for 2004 and 2005, and they have seven jails,  
8 I think, that they're getting reports from. And the  
9 2005 report indicated that it wasn't a sufficient  
10 sample to make a -- to really provide a reliable rate,  
11 and so we don't know what the scope of the problem is.  
12 That's the main thing, it seems to me.

13                   Second is that in developing the  
14 recommendations that the Commission makes regarding  
15 other facilities, that perhaps Mr. Rivera's people or  
16 somebody make a realistic estimate of what it will  
17 cost the Indian jails to comply. Because the reality  
18 is that we can set standards, as many standards as we  
19 would like, but if the resources simply aren't  
20 available to the tribes, they're not going to meet  
21 those standards. And it would be a tragedy, let me  
22 suggest, if the Indian jails were left behind in this  
23 effort to improve the jails generally.

24                   MR. GUILLERMO RIVERA: Yes. I think  
25 that what we need to look at -- this is just my

1 professional opinion -- it's not whether it's Indian  
2 Country or whether it's out there in the county jails,  
3 because I guarantee you, in my tenure of two years  
4 with the Bureau of Indian Affairs, I have closed  
5 somewhere around four to five facilities that were  
6 just totally, totally unsafe and just falling apart,  
7 and I wound up taking these people out the jails where  
8 they were on the reservation and put them in county  
9 facilities. Hopefully, I would put them in county  
10 facilities that are safer than where we were. Okay?  
11 But I think the issue is not whether -- it's the right  
12 thing to do. What this Commission wants to do, what  
13 you are going to do, what you have tried to do is the  
14 right thing to do. What we have to have is the  
15 resources.

16                   You know, I'm -- when I first took over  
17 the Bureau of Indian Affairs, I was staffed at 30  
18 percent. Now I'm at 50 percent and people are telling  
19 me it's wonderful. When you get copies of these  
20 reports, you're going to see -- you know, in my  
21 preliminary report in there, I indicated that Shubnum  
22 had visited 38 facilities. Out the 38 facilities that  
23 he visited, he recommended closure, not replacement,  
24 not repair, but closure of 90 percent of those  
25 facilities. I can tell you -- and this is just off

1 the top of my head -- my minimal amount of experience.  
2 If we were to replace those facilities today, the cost  
3 of replacing those facilities today with the same  
4 amount of beds, you're looking at six billion dollars  
5 for a 40-year cycle. So that's what the issue is.  
6 And these facilities -- these facilities, the ones  
7 that Shubnum is recommending closure are falling  
8 apart, are in bad shape.

9                   So we -- you know, the standards are  
10 good and we need to move in that direction. And I do  
11 not think -- Mr. Sampson Cowboy is here and he  
12 might -- I don't think he'll disagree with me. I  
13 think this is the right thing to do. This is the  
14 thing that we need to do. But if there aren't any  
15 resources attached to this, you know, we'll do our  
16 best, but I don't think we'll achieve anything.

17                   COMMISSIONER SMITH: One of the --  
18 first, thank you for appearing, because, certainly,  
19 one of the questions that has emerged in various  
20 conversations about the Prison Rape Elimination Act is  
21 its application to facilities in Indian Country. And  
22 so I guess my question would be, is it your  
23 understanding and are you operating under the  
24 assumption that the Prison Rape Elimination Act  
25 applies to facilities in Indian Country?

1                   MR. GUILLERMO RIVERA: I can only speak  
2 for the direct service programs of the Bureau of  
3 Indian Affairs, which are 20. Yes, we are operating  
4 under that assumption. The remainder of the  
5 facilities that are out there, I don't think you're  
6 going to get an argument, because the majority of the  
7 folks that I have spoken to, you know, jail  
8 administrators, chairmen in Indian Country, they feel  
9 it's the right thing to do and it's the right  
10 direction to go.

11                   COMMISSIONER SMITH: So you're involved  
12 in the BJS data collection? I mean, I'm just  
13 asking --

14                   MR. GUILLERMO RIVERA: No. Yes. We  
15 got involved -- the problem with the BJS data  
16 collection is that -- and if I could be very point and  
17 direct -- is that they will take this form, they will  
18 send it out to Indian Country, they will say, please  
19 fill out the form and send it back.

20                   Well, first of all, why do I need to  
21 fill this out? Who are you to tell me to fill this  
22 form out? So they weren't getting anything but maybe  
23 five tribes were filling out, out of the 561  
24 recognized tribes. So one of things I recommended to  
25 BJS is -- and we got involved with them about nine

1 months ago -- is that I have what we call quarterly  
2 meetings where the district supervisors go out and  
3 just set up meetings and invite the tribes. I  
4 recommended to BJS to go out and talk to the tribes  
5 and see if the information that they were trying to  
6 gather made any sense. In some cases, it didn't, so  
7 they even changed the format.

8                   The Bureau of Indian Affairs tries --  
9 are in the process now of trying to collect data. The  
10 problem is, there isn't a standard data collection  
11 format anywhere in Indian Country. So that's one of  
12 the things. You know, trying to -- within the  
13 Bureau of Indian Affairs, we collect our own data.  
14 Trying to get data from the tribes, that's a different  
15 story.

16                   COMMISSIONER SMITH: So, Mr. Rivera,  
17 when I talk about -- and I'm just asking.

18                   MR. GUILLERMO RIVERA: Sure.

19                   COMMISSIONER SMITH: You know, when I  
20 talk about whether the position is that PREA applies,  
21 you know, one of the biggest, most visible parts of  
22 PREA, at least right now, is the data collection. But  
23 what I'm hearing from you is that the data collection  
24 sort of process doesn't really work well in the way  
25 that Indian Country is structured. Is that fair to

1 say?

2 MR. GUILLERMO RIVERA: Yes. Because if  
3 you're relying on -- well, if you're relying on BJS to  
4 collect the data, but the data that is collected is  
5 not going to be complete. Except we -- the BIA  
6 provides the data, but not all the tribes are  
7 providing that data.

8 CHAIRMAN WALTON: Mr. Cowboy, what do  
9 you think about what we've been talking about?

10 MR. SAMPSON COWBOY: First of all, the  
11 first question that you raised, I appreciate what this  
12 Commission is doing, and I'm under an impression that  
13 this is going to apply to us, too. I think if it is,  
14 then, you know, it sends a message not only to the  
15 Indian Country out there, I think it sends a strong  
16 message to the Bureau of Indian Affairs, too. And  
17 that's what we appreciate.

18 The other thing about data collection  
19 is, if you work with the tribes, I think they're under  
20 the perception for years and years, we have been  
21 submitting data, we have been submitting data on a  
22 quarterly basis and on an annual basis, but we never  
23 get a feedback. I think that's where the Indian  
24 tribes are coming from is a lot of times they submit  
25 their data, but they don't get a feedback. And if

1 there is a feedback that comes with it, we'll  
2 understand what is going on out there and what the  
3 datas are being used. The perception is that a lot of  
4 times when we submit our data, is that they're using  
5 our numbers to enhance their numbers. That's the  
6 perception out there in Indian Country, and that's how  
7 we view it, too.

8                   The -- right now, I think, as we speak  
9 about data, we went on our own to Navajo Nation. We  
10 have a lot of data to share. We -- we are taking the  
11 lead role in Indian Country in improving our  
12 technology and that complements our data. So we are  
13 doing that and it's out there. And if anybody needs  
14 it, we have the data.

15                   The other thing about the facility that  
16 was brought out is, we're running our own facilities  
17 since 1959. And how are you going to manage the --  
18 these issues that are arising, the sexual assault and  
19 stuff like that. It's going to be -- it's there, I  
20 can say that, because of the facility. The facilities  
21 are not up to standard. They're -- they were built  
22 like a dormitory in some areas, and it's really not  
23 feasible to have that one-man visual security that  
24 they've built per -- up in today. So there is a lot  
25 of issues there.

1                   And the other perception that we have  
2 out in Indian Country is, when we talk about curing  
3 some of these issues, social ills or inmate ills and  
4 stuff like that, we always point back to the facility.  
5 When are we going to get a facility. When you talk  
6 about -- let's say, if the Commissioner goes out there  
7 in Indian Country, the question is going to be raised,  
8 what are you doing here? Are you helping us getting a  
9 facility? And that's -- that's the perception. I  
10 think that's what I bring is the perception, what is  
11 out there. Not more than what I'm trying to justify  
12 how we can improve a lot of these things. There is a  
13 lot of perception out there right now. Thank you.

14                   COMMISSIONER SMITH: Well, certainly  
15 one of the issues -- and I think individual  
16 Commissioners asked it and certainly the entire  
17 Commission asked it -- is you understand that under  
18 the Prison Rape Elimination Act, there are grants, but  
19 Indian Country was not eligible to receive any of the  
20 grants. And so I imagine that that may have  
21 contributed -- Mr. Rivera, I see you going --

22                   MR. GUILLERMO RIVERA: Well, the  
23 problem is real simple. The BIA is a Federal agency,  
24 and we receive our appropriations through Congress.  
25 Congress says, okay. BIA, this is what you're going

1 to have. And we tried to make the buck go as far as  
2 we can, where we felt it'll go. But you can only  
3 stretch the dollar so far. And to give you an  
4 example, Homeland Security. A lot of the states  
5 received a lot of money through Homeland Security, yet  
6 we have tribes that are sitting on the borders that  
7 didn't receive a penny, because that money was not  
8 filtered down. So --

9                   COMMISSIONER SMITH: And the same would  
10 be true --

11                   MR. GUILLERMO RIVERA: And I guess  
12 that's the just the way it was determined that it was  
13 going to happen and -- and, please, I'm not here to  
14 question the powers that be in Congress, but that's  
15 basically what happened.

16                   PROF. KEVIN GOVER: Well, I'm not  
17 constrained, since Mr. Rivera is a Federal official.

18                   Two things have to happen in order for  
19 the tribes to partake in these programs. The tribes  
20 did, during the creation the Department of Homeland  
21 Security, point out that they have major border lands.  
22 At the Toono O'odham Nation in Arizona, it has a long  
23 border with Mexico, and went in and said, look, we  
24 need some of this money, too. And by the way, once  
25 they began to address the problem over in San Diego

1 and in Texas, well, guess where the illegal  
2 immigration moves to? It moves to the reservation.  
3 It will move to the point of least resistance. That's  
4 the reservation because the tribe simply doesn't have  
5 the resources to put adequate numbers of people on the  
6 border.

7                   And so there -- we have to get the  
8 Congress to understand that the tribes really are part  
9 of the American Federal system when it comes to law  
10 enforcement. They have recognized that in other  
11 areas, for example, environmental protection. But for  
12 some reason, law enforcement quite never makes the  
13 grade.

14                   Second, we have to get the Executive  
15 Branch to acknowledge the same thing. It's an  
16 extraordinary Attorney General who really makes much  
17 of an effort to understand the Department's law  
18 enforcement responsibilities in Indian Country. It's  
19 sort of mundane. It's common, the jurisdiction that  
20 the FBI, for example, has on Indian reservations where  
21 they're investigating -- pardon the expression --  
22 garden variety assaults, rather than fighting  
23 terrorism or fighting the drug war, and all these  
24 things that -- that are the current priorities. And  
25 so Indian Country law enforcement traditionally goes

1 begging, both in terms of the resources, the  
2 investigative resources of the Federal Bureau of  
3 Investigation, and the prosecutorial resources of the  
4 United States Attorneys. Because the U.S. Attorneys,  
5 as we have learned just recently, are watched very  
6 closely in terms of statistics, among other things.  
7 How many prosecutions can you bring, how many drug  
8 convictions can you get, how many illegal immigration  
9 convictions can you get. And, again, basic law  
10 enforcement, prosecution for the basic offenses,  
11 murder, sexual assault, common assault, robbery,  
12 burglary, et cetera, on the reservation, simply  
13 doesn't take place. So they end up in the hands of  
14 Mr. Cowboy, with his inadequate facilities, his  
15 inadequate resources, and they're expected to address  
16 major crimes with county sheriff type of resources,  
17 and it just can't be done.

18                   COMMISSIONER FELLNER: Mr. Cowboy, I  
19 wondered if -- I'm trying to follow this and I read  
20 the testimony that was submitted by Mr. Gover. You  
21 know, Indian law and all of this is -- and the  
22 divisions, it's certainly different for me to get a  
23 hold of and so quickly. But I realize, as I'm  
24 listening, I still don't have a sense -- okay. Not  
25 enough people, not enough -- the facilities aren't

1 good, all of those problems. That exists, actually,  
2 in lots of rural, non-Indian Country areas, too. I  
3 mean, we've heard about it today and we can go to any  
4 number -- any state into rural and you're going to  
5 have those same problems, without the -- obviously,  
6 the jurisdictional issues.

7                   But I wondered if you could talk a  
8 little more there from your perspective about what you  
9 see as the nature, if there is a problem of sexual  
10 abuse in the jails or lock-ups. Is it staff on  
11 detainee or is it inmate on inmate, and other than  
12 better facilities, you know, what a lot of people --  
13 what are the sort of steps that you think could be  
14 taken and should be taken now to address that, or that  
15 the -- we, the Commissioners, should at least be  
16 recommending be taken?

17                   MR. SAMPSON COWBOY: Thank you.

18                   The -- from the Navajo Nation, again,  
19 one of the factors is the training for personnel in  
20 the facility. We don't have individuals that are  
21 trained to detect assaults, gathering, preserving  
22 evidence within our facility, for various reasons.  
23 One, it goes back to the training. Secondly, that we  
24 have a high turnover, so we have to continue to train  
25 these individuals. Third, is that, you know, the

1 salaries are so low that people are just leaving. You  
2 know, you train them and they leave. And third is the  
3 facility itself. The facilities aren't built to where  
4 you can see visually, provide security from one  
5 location. You have to walk. These are the facilities  
6 that we're talking about. There is facilities that  
7 you have to walk in a circular, you know, area to --  
8 in order to cover all the facility. And when you're  
9 covering the facility, there are some blind spots  
10 there, so -- you know, and to actually say somebody  
11 has been sexually assaulted, you know, they have to  
12 report it. And that's where a lot of these training,  
13 I think -- if you're going to make some  
14 recommendations, I think in Indian Country there has  
15 got to be some training for these staff that needs to  
16 come with.

17                   The other area regarding the facility,  
18 I understand there is a lot of issues out -- also  
19 outside that -- and in Indian Country. However, a lot  
20 of these buildings that we have built are in the '50s.  
21 That's why you don't have these visual security that  
22 they have that they built. And they have pods now.  
23 We don't have pods, we have cell rooms. We have  
24 sections that those -- we're still in that area. And  
25 we have walls that have -- that provide blind spots.

1 We don't have these clear windows to visually see  
2 these people. We still have those walls and then we  
3 have those steel doors that are still in place. So  
4 these are some of the issues that we have.

5                   COMMISSIONER FELLNER: I understand the  
6 facilities problem and you've described it eloquently.  
7 But I'm still not understanding, do you have a problem  
8 with sexual abuse in your facilities and is it a  
9 problem of inmate-on-inmate abuse, is it a problem of  
10 staff-on-inmate abuse, and what steps -- I also hear  
11 you very much about turnover and training. But have  
12 any steps been taken to date for -- for example, on  
13 grievance systems or on informing inmates or -- has  
14 anything been done to address sexual abuse if it is,  
15 in fact, a problem? I'm still not clear if it is a  
16 problem.

17                   MR. SAMPSON COWBOY: Ma'am, I was  
18 getting there with my story here. It's taking a  
19 little longer.

20                   The problem, we don't know how  
21 extensive it is, but we know it exists. There have  
22 been some reports on inmates-on-inmates assault.  
23 There has been report on staff-on-inmates assaults.  
24 These -- and in those cases, their reporting came  
25 during transport, not at the facility. It was in

1 the -- during the transport. That's some of the  
2 reports that we have received.

3                   What steps are we taking? Well, right  
4 now we're working with IHS, mental health. They come  
5 in, they provide some screening for us. We also have  
6 Behavioral Health, which comes in from the tribal  
7 program, also provides some counseling for these  
8 inmates to give us some information.

9                   Right now there is a sexual transmitted  
10 disease that's taking -- that's a pilot project that's  
11 taking place in our facilities. So there is a lot of  
12 gathering of data in that regards. But how extensive  
13 to pinpoint to give you the exact number, I can't do  
14 that right now. We're not at that level right now.  
15 We're not that -- I guess we're concerned right now,  
16 we're at the preliminary stage and going in that  
17 direction.

18                   I hope I answered your question, ma'am.

19                   COMMISSIONER FELLNER: Well, I think --  
20 I mean, I understand that you don't have specific  
21 numbers. And if I hear you correctly, you say there  
22 have been a few incidents during transport.

23                   MR. SAMPSON COWBOY: Yes, ma'am.

24                   COMMISSIONER FELLNER: So you're saying  
25 you're not aware of any incidents in the facilities

1 themselves?

2                   MR. SAMPSON COWBOY: The facility --  
3 inmate-on-inmate, yes, there has been reports. But on  
4 staff-on-inmates, there hasn't been a report  
5 recently -- well, way back then, yes, there -- when I  
6 was a criminal investigator, it was probably in the  
7 '90s, in the mid '90s, that is when we had some  
8 reports.

9                   COMMISSIONER FELLNER: One other  
10 question. We've -- in a lot of the hearings, we have  
11 heard that inmates are very reluctant to make reports  
12 of either abuse by staff, because then they fear  
13 retaliation, or abuse by other inmates, for whole set  
14 of reasons, retaliation, shame, the sense that it  
15 doesn't do any good, et cetera, et cetera.

16                   Do you believe in Indian -- and some of  
17 those are sort of culturally specific to facilities  
18 and cultures that grow up within prison cultures. Do  
19 you believe, in Indian Country, that inmates who have  
20 been abused, either by staff or by other inmates,  
21 would come forward, or do you think there is a failure  
22 to report or a reluctance to report in Indian  
23 facilities, the same as in many other facilities  
24 outside of Indian country?

25                   MR. SAMPSON COWBOY: I think we as --

1 living in a Native American community, we're very  
2 reluctant to report any crime. A lot of crime that  
3 occurs on family on family, and when it comes to  
4 Indian Country inmate, it's almost like distant  
5 relatives on distant relatives. So, you know, that's  
6 how it would be. And I guess in essence we're -- we  
7 view ourselves is that we're all related, so we really  
8 don't report the crime that takes -- takes upon us.  
9 So that's one area of concern that we have identified  
10 to, the lack of reporting.

11                   And the other thing is, you know, there  
12 is a high number of sexual abuse among our youth, our  
13 kids out there. So a lot of these people have been  
14 abused when they were small and they are also abusers  
15 that is incarcerated, so there is -- for various  
16 reasons they won't report it, because they also were  
17 involved in that when they were growing up.

18                   COMMISSIONER FELLNER: Thank you.

19                   COMMISSIONER KANEB: Mr. Rivera, did I  
20 hear you correctly when you were giving an estimate of  
21 what it would take to replace the useless facilities  
22 that now exist at six billion dollars?

23                   MR. GUILLERMO RIVERA: You heard me  
24 correctly, sir. Now, understand, when I say six  
25 billion dollars, I mean 90 percent of the 38

1 facilities that we visited, at the existing bed  
2 capacity, for a life span of 40 years, you will need  
3 six billion dollars to maintain that for 40 years.

4 COMMISSIONER KANEB: Oh, okay.

5 MR. GUILLERMO RIVERA: Follow what I'm  
6 saying? If you were replacing the bed capacity of  
7 those 38 facilities as they stand now.

8 CHAIRMAN WALTON: Six billion to  
9 construct and maintain?

10 MR. GUILLERMO RIVERA: Right. There is  
11 no sense in building it unless you can maintain it.

12 COMMISSIONER KANEB: Yes. No, I do  
13 understand that. But the capital cost of the physical  
14 plant replacement is a lot less than six billion  
15 dollars.

16 MR. GUILLERMO RIVERA: Yes, sir.

17 COMMISSIONER KANEB: Okay. That's all  
18 I wanted to understand. Okay. Thank you.

19 MR. GUILLERMO RIVERA: Now, the final  
20 phase of that Shubnum report, like I indicated, will  
21 be completed probably in a month or so and the numbers  
22 will be exact, giving you a better idea what the cost  
23 will be.

24 COMMISSIONER KANEB: Okay. Then, just  
25 switching to the prevalence or lack of prevalence of

1 sexual abuse in Indian Country facilities. My take,  
2 after listening to all of you, is there is a fairly  
3 high suspicion that -- that such abuse may be  
4 fairly -- at a fairly high level, but because of lack  
5 of, let's say -- if I can misuse a word that's used a  
6 lot now -- lack of transparency in the physical  
7 facilities, so you can't really tell what is going on.  
8 And, more importantly, cultural prohibitions,  
9 inhibitions, constraints, whatever, on reporting to  
10 anybody, much less the outside world, any sort of  
11 measurement of prevalence is -- is going to be  
12 difficult, bordering on the impossible. I mean, I'm  
13 just asking if that's a fair assessment.

14                   PROF. KEVIN GOVER: Not impossible, but  
15 very difficult. And I think that you'll find that the  
16 Indian inmates will be more reluctant than most to  
17 report. It will be a real challenge to get meaningful  
18 data on this, at least at most facilities. There are  
19 some that are more modern, they would have access to  
20 information in other ways. But you're absolutely  
21 right, it may be impossible to find the extent of this  
22 problem.

23                   COMMISSION KANEB: More reluctant, why?

24                   PROF. KEVIN GOVER: For the reasons  
25 Mr. Cowboy was talking about. I mean, it is cultural

1 in the sense that we -- it's hard to even -- take a  
2 battered spouse. We all know that a battered spouse  
3 is reluctant to report in the culture at large. We've  
4 found they're even more reluctant on Indian  
5 reservations. Certainly, the exploitation of  
6 children, the same thing. We find that it's -- that  
7 Indian children are even more reluctant to say what  
8 has happened to them than others. And I do think that  
9 it's because -- because of the shame that Mr. Cowboy  
10 is talking about. These are close-knit communities  
11 and even the idea of telling somebody of what a  
12 relative has done to you is -- is -- it's very, very  
13 hard. And so I am confident, just from my experience  
14 working with Indians for -- for my entire life,  
15 really, that it's grossly underreported and probably  
16 always will be.

17                   CHAIRMAN WALTON: Thank you for your  
18 candor.

19                   COMMISSIONER SMITH: Just one last  
20 question, sort of following that up.

21                   To your knowledge, among the three  
22 here -- and this isn't the only barometer, but just a  
23 question. Are you aware of any prosecutions of either  
24 staff or inmates for sexual violence in institutional  
25 settings in Indian Country?

1                   COMMISSIONER FELLNER:  And who would  
2 have jurisdiction -- no, I'm just saying, and who  
3 would prosecute?

4                   MR. GUILLERMO RIVERA:  I'm sorry?

5                   COMMISSIONER FELLNER:  And who would  
6 have responsibility for prosecuting?

7                   MR. GUILLERMO RIVERA:  Well, it's -- I  
8 believe it's considered a felony so it would be the  
9 U.S. Attorney's Office.

10                  COMMISSIONER SMITH:  Are you aware of  
11 any?

12                  MR. GUILLERMO RIVERA:  The one I am  
13 aware of is up in Sioux Country, I believe Pine Ridge.  
14 They -- and I don't have -- this is many years ago.  I  
15 don't know, maybe five or six years ago.  Sampson  
16 might have heard of it.  Where a juvenile was placed  
17 in an adult facility and he was raped repeatedly by  
18 adult inmates.  That was reported and was  
19 investigated.  Now, whether it was prosecuted, I do  
20 not know.  But that was -- again, that's a -- that's  
21 not a direct service program, that's a 638 program  
22 that's handled by the reservation.

23                  MR. SAMPSON COWBOY:  The question, how  
24 we handle our issues out in Navajo Nation is, we  
25 prosecute them in the tribal court, also, and then we

1 jointly work with the FBI to prosecute it in a Federal  
2 court. Our Internal Affairs also looks at the policy,  
3 if the policy has been violated, or the procedures  
4 that have been violated. So there are several steps  
5 that we take. Right now, I don't know -- we haven't  
6 had any investigation or any report that's before us  
7 right now as I'm sitting here.

8                   The other thing that we do is, with all  
9 incidents that involves detention facility or -- or a  
10 police officer, we submit that to BIA in the form of  
11 what had happened. So there is layers of reporting  
12 that we do.

13                   COMMISSIONER SMITH: But as between the  
14 collective folk who are here on the panel, there is  
15 one incident that you can recall?

16                   MR. GUILLERMO RIVERA: I recall that  
17 one incident, and that was because that was one of the  
18 things that prompted the separation of the adults, to  
19 ensure that there was a separation of juvenile and  
20 adults. But, again, I do not know whether that was  
21 prosecuted.

22                   PROF. KEVIN GOVER: I believe that it  
23 was. And let me just add that the only -- and just  
24 sort of a general awareness, the only time these  
25 matters are sufficiently grave to warrant the

1 attention of Federal officials tends to have been when  
2 it involved juveniles. And there was a problem in the  
3 jails for a long time, which Mr. Rivera and his  
4 predecessors worked very hard to clean up, where  
5 juveniles were being housed with the adult inmates and  
6 that obviously is a recipe for exploitation.

7 CHAIRMAN WALTON: Anyone else?

8 Well, thank you very much and I hope we  
9 can do some good and make some recommendations that  
10 will make a difference. So thank you very much.

11 COMMISSIONER FELLNER: Did you decide,  
12 you think, that the Pine Ridge incident was five  
13 year -- no, you can still get up and get your stuff.  
14 I'm just -- was it five years, ten years? I would  
15 like to actually follow up on that one.

16 MR. GUILLERMO RIVERA: I think it was  
17 about five years old.

18 COMMISSIONER FELLNER: Which state?  
19 Montana?

20 MR. GUILLERMO RIVERA: South Dakota.

21 COMMISSIONER FELLNER: Okay.

22 CHAIRMAN WALTON: We're adjourned until  
23 9:00 o'clock tomorrow morning. Thank you.

24

25