

1 reference to your classification process, can you
2 explain how that -- how that is done? What do you
3 access in order to make those classification
4 determinations?

5 MAJOR K.W. BERRY: I'm not -- and I
6 have not worked in classification. However, I can say
7 that it's a point system, as I recall, looking at --
8 reviewing the system. Inmates are graded according --
9 given points according to their criminal
10 sophistication, their age, their race, their sex, and
11 based on that number, it's determined where they are
12 housed and how they are housed.

13 CHAIRMAN WALTON: Now, if somebody gets
14 arrested by the Houston Police Department, are they
15 immediately brought to your facility or they're housed
16 in a police station before they are taken to court?

17 MAJOR K.W. BERRY: If my memory serves
18 me correctly, they're brought to the Houston Police
19 Department first prior to coming to our office, or
20 being booked into our station and --

21 CHAIRMAN WALTON: Would they be
22 detained overnight? Say, if they were arrested at
23 6:00 or 7:00 at night, would they be in a police
24 holding facility before they go to court or would they
25 be brought to you?

1 MAJOR K.W. BERRY: That would depend on
2 if they were conducting an ongoing investigation,
3 Commissioner, as I understand their process.

4 CHAIRMAN WALTON: So if the -- if it's
5 a completed crime and there is no further
6 investigation to take place, then they would be
7 brought to you after booking?

8 MAJOR K.W. BERRY: Yes, sir.

9 CHAIRMAN WALTON: But if there is an
10 ongoing investigation, then they may remain at the
11 police station for further investigation until they're
12 brought to court.

13 MAJOR K.W. BERRY: Is my understanding,
14 yes, sir.

15 CHAIRMAN WALTON: Is there an amount of
16 time under Texas that they can be detained before they
17 are brought before a judge?

18 MAJOR K.W. BERRY: I don't know
19 particularly, but I believe that's 72 hours.

20 CHAIRMAN WALTON: Of the assaults that
21 were reported, were there any convictions in those
22 cases?

23 MAJOR K.W. BERRY: My data doesn't
24 reflect convictions. However, it only reflects that
25 they were filed on and charges were accepted by the

1 D.A.'s Office. There was no -- I don't have any
2 follow up on whether convicted.

3 CHAIRMAN WALTON: And your inmate
4 handbook, you are said inmates are given that upon
5 coming into your facility?

6 MAJOR K.W. BERRY: Yes, sir, they are.

7 CHAIRMAN WALTON: And does it say
8 anything about sexual assault?

9 MAJOR K.W. BERRY: What it addresses is
10 criminal behavior or behavior that -- which disrupts.
11 It has a number of charges involved in that, some of
12 which -- if, for example, a sexual incident occurred
13 between two inmates and it was determined that it was
14 a consensual sexual incident and no charges being
15 filed, there is a disciplinary grievance -- there is a
16 disciplinary process in which that particular case
17 would go through the department -- or within the
18 detention system.

19 CHAIRMAN WALTON: And is there any
20 reporting system you have in place where inmates are
21 able to report the incident without fear of
22 retaliation?

23 MAJOR K.W. BERRY: As soon as an
24 incident is reported or comes to our attention, by any
25 way, the inmate is immediately taken from his assigned

1 area, and in most cases rehoused and assured that he
2 won't be exposed to anyone or any participants in that
3 act against him. He would be definitely protected,
4 yes. In fact, he would be reclassified for his
5 protection.

6 CHAIRMAN WALTON: Commissioner Puryear.

7 COMMISSIONER PURYEAR: I just have one
8 quick question and that is, how you ascertain whether
9 it was consensual and therefore something to be dealt
10 with internally versus something to refer outside.
11 It's always troubled me how one goes about determining
12 the level of consent within the prison environment or
13 detention environment.

14 MAJOR K.W. BERRY: What we have found
15 in investigating, through investigations, after the --
16 this is all determined after the investigation and
17 usually the inmates will say, well, look, we agreed to
18 have this contact and he didn't pay me my commissary
19 he was going to give me. And this is how -- we don't
20 make that determination based on what we find
21 ourselves. We refer those cases to the D.A.'s Office.
22 If they don't wish to pursue charges, we can't make
23 that happen. However, we do talk to the inmates
24 individually and find out what their level of
25 involvement in that incident was, both inmates.

1 COMMISSIONER FELLNER: Would you -- or
2 I don't know if you can, but it would be very helpful
3 if you could send us the -- or send to the staff the
4 Commission on Jail Standards standards so we could
5 review them to see what they have on these
6 PREA-related matters. And it would be very helpful if
7 we could get a copy of the training curriculum that is
8 used, again, so we could see what kind of training is
9 provided on these matters.

10 And I just wanted to follow up on
11 Mr. Puryear's questions. If inmates know that if they
12 report a sexual incident that it may end up exposing
13 them to disciplinary action if it's determined to be,
14 quote, consensual, isn't that in and of itself a
15 strong disincentive to reporting, one; and, two, you
16 mentioned as an example where an inmate -- you know,
17 they have sex because someone -- as payment for a
18 commissary debt. Would you consider sex as payment
19 for a commissary debt consensual or something that
20 warrants some kind of either disciplinary or criminal
21 response?

22 MAJOR K.W. BERRY: In response to your
23 first question: Deterrents is our biggest element
24 that works for us here. Inmates in the Harris County
25 jail understand if they're involved in a criminal act,

1 they will be prosecuted to the fullest extent that's
2 available to us.

3 Despite the fact that these people are
4 in jail doesn't mean that they're stupid. They play
5 games. They test the system. They know that if
6 they're involved in these activities that, you know,
7 they'll be reclassified; they're subject to
8 disciplinary action, and some still participate.

9 COMMISSIONER FELLNER: I'm not sure
10 that answered my question as to whether or not if
11 they -- that they would not report. It strikes me as
12 a very low number of incidents, only to have 55
13 incidents, total reported incidents out of an average
14 daily population -- in five years, out of an average
15 daily population of 8,000, which makes me wonder
16 whether some -- it's just low. That may be because
17 you have an incredibly safe jail, which would be
18 wonderful. It may be because some inmates are not
19 reporting, which tends to be the case around the
20 country. And I was just wondering if you think there
21 are -- or let me put it this way.

22 What steps do you take to encourage
23 inmates to report abusive situations, either by staff
24 or by other inmates?

25 MAJOR K.W. BERRY: The efforts that we

1 take to encourage them is the fact that, you know,
2 them being involved in an incident usually leads to
3 other troubles for them in the cellblock. We can
4 reclassify them, rehouse them, get them out of that
5 environment they're in if, in fact, they are involved
6 voluntarily or involuntarily. That usually happens
7 after any reports incidents that we get them out of
8 the environment they're in. That's an incentive for
9 them to report anything that may be occurring,
10 voluntary or involuntary. However, those that
11 participate voluntarily, we don't usually find out
12 that it's a voluntary situation until long after the
13 investigation. Other than that, we're pursuing these
14 investigations for criminal acts by the perpetrator.

15 COMMISSIONER FELLNER: And would you
16 answer how you consider, if somebody has sex to pay
17 off a commissary debt, how do you characterize that?
18 Is that consensual in terms of how it would get listed
19 and dealt with in your facility?

20 MAJOR K.W. BERRY: No, ma'am. I don't
21 consider it consensual because inmates can't consent
22 to sex in our care and custody and control. They have
23 no consent to be able to do that under our control.

24 The inmates -- the determination of
25 whether they were consensual or not, this is usually

1 done after we've pursued prosecution after the
2 investigation is done. Then they'll -- well, I
3 participated voluntarily. This is usually after the
4 investigation. We pursue these things criminally to
5 begin with, every one of them.

6 COMMISSIONER FELLNER: Thank you.

7 CHAIRMAN WALTON: Let me just ask. If
8 a person comes forward and says that they were forced
9 to engage in a sexual act, and later a determination
10 is made administratively that it wasn't consensual --
11 I mean, that it wasn't forced. That it was consensual
12 but the person is still insisting that it was forced,
13 even though you all make a determination
14 administratively that it wasn't. Is that person
15 sanctioned?

16 MAJOR K.W. BERRY: If --

17 CHAIRMAN WALTON: The other person
18 says, it was consent. The alleged victim says, no, it
19 was forced. But administratively, you determine that
20 it was, in fact, consensual. Is that report who made
21 the report punished, even though they continue to
22 insist that it was -- that it was forced?

23 MAJOR K.W. BERRY: No, they are not
24 punished. They are reclassified and rehoused. We
25 again bring this before the District Attorney's Office

1 to make determination on criminal charges. If, in
2 fact, they don't accept charges and they say, well, we
3 don't feel like this is prosecutable, we make the
4 determination on who the victim is in this case and
5 take every step to protect the victim.

6 COMMISSIONER PURYEAR: You said, are
7 reclassified or rehoused. Are they put into a higher
8 security classification where they have less liberty
9 within -- relatively less liberty within your
10 facility?

11 MAJOR K.W. BERRY: No, not necessarily.
12 That's all depending on how available housing. In
13 some cases, they are put in administrative segregation
14 areas. They have full services in terms of, they have
15 their own room, they're in an area with other inmates
16 just like themselves in terms of protection, so to
17 speak. Not that they have any -- they go to
18 recreation with these same people, they go to the law
19 library with these same people, but they're not locked
20 down, no. Will.

21 COMMISSIONER AIKEN: Again, thank you
22 so much for appearing today. I just -- I have about
23 four questions.

24 Can you explain briefly the type of
25 housing configurations that you have? How is your

1 population, from medium to high custody inmates, how
2 are they housed, the majority of your population? Are
3 they in single cells or are they in open dorms or in
4 pods, or how does that work?

5 MAJOR K.W. BERRY: We have -- the pod
6 configuration, which may be broken down, will have in
7 96, and they could be broken down in cells of 24, four
8 of 24, or two of 48. And we have dormitory and single
9 cell housing.

10 Our maximum risk inmates are put in
11 single cell housing. They're allowed to come out one
12 hour a day. They are taken to recreation one at a
13 time, individually. They go to the law library
14 individually.

15 Your other dorm housing areas that are
16 not restricted, for example, admin seg, they're not
17 under any restrictions. They're taken as a group to
18 recreation. Although they live in a cellblock, they
19 have individual cells within the cellblock. And then
20 we have the dormitory cells which have a group
21 setting, in terms of one day room and several inmates
22 in one cell -- in one cell area.

23 COMMISSIONER AIKEN: So you can have --
24 and that's basically your general population, so to
25 speak?

1 MAJOR K.W. BERRY: Yes.

2 COMMISSIONER AIKEN: For instance, the
3 majority of your population is housed in cells and it
4 can house three, two, three, four people?

5 MAJOR K.W. BERRY: Yes, that's correct.

6 COMMISSIONER AIKEN: And then with a
7 centralized day room. Is that correct?

8 MAJOR K.W. BERRY: That is correct.

9 COMMISSIONER AIKEN: Okay. And
10 question that I asked -- and I don't want to get too
11 specific with the classification criteria, but if I
12 walked into a general population housing unit and
13 looked at the population, what is the basic driving
14 criteria for that inmate to be in that specific
15 housing configuration?

16 MAJOR K.W. BERRY: And, again, I am not
17 well versed in classification. However, I will tell
18 you that inmates with like histories would be housed
19 together.

20 COMMISSIONER AIKEN: Okay. You said
21 with like histories. Are we talking about criminal
22 charges, institutional behavior, mental disease,
23 medical diseases, what?

24 MAJOR K.W. BERRY: Obviously, mental
25 health issues, mental -- and medical conditions would

1 affect that classification. Your criminal history
2 obviously would have an affect on that classification.

3 COMMISSIONER AIKEN: Okay. So,
4 therefore, if I walked into a general population, I
5 would get armed robbery charges here, or murder
6 charges here, and another place is embezzlement over
7 here? How are these people placed in the housing
8 units? I mean, what criteria generally is the driver
9 of placement of this population?

10 MAJOR K.W. BERRY: Mr. Commissioner, I
11 would be really -- I'm having difficulty answering
12 your question because, here again, I don't deal
13 directly with classification.

14 COMMISSIONER AIKEN: Yes.

15 MAJOR K.W. BERRY: Although I will add
16 this and say, again, that our classification system
17 meets or exceeds that which is required by the Texas
18 Commission on Jail Standards.

19 COMMISSIONER AIKEN: I understand that.
20 That is not really what I'm getting at. I'm just
21 trying to see what is the general reason for placing
22 an inmate in this particular housing configuration.
23 Not necessarily specific criteria of a classification
24 tree, I think you called it, which explained what is
25 the classification tree. I'm not talking about that.

1 MAJOR K.W. BERRY: Let's say, for
2 example, if we have a number of ex-convicts, people
3 who have been in a penitentiary, who would have prior
4 convictions, you would find that group of inmates in
5 the same cellblock. You would not have any first
6 offenders on that cellblock.

7 COMMISSIONER AIKEN: Okay. My next
8 question is, and you may not be able to answer this
9 either, but what is the formalized process to put
10 inmates in specific cells when there are multiple
11 placements of inmates into housing unit? What is the
12 criteria you use to put three inmates in one cell?
13 How -- how are housing bed assignments made? Is there
14 a formal process?

15 MAJOR K.W. BERRY: Mr. Commissioner,
16 again, I would have to say that there is a formal
17 process. I'm just not familiar with it.

18 COMMISSIONER AIKEN: Okay. Well, we'll
19 move on, then.

20 You made the comment about having call
21 buttons or panic buttons. Is that correct?

22 MAJOR K.W. BERRY: That is correct,
23 sir.

24 COMMISSIONER AIKEN: Okay. Where are
25 they located in the housing units of general

1 population?

2 MAJOR K.W. BERRY: There is call
3 buttons at the door of each individual cell. A call
4 button calls directly to the pod deputy's location
5 with two-way communications. And it's also -- most of
6 them are equipped with a second button that provides
7 radio -- commercial radio stations for them.

8 COMMISSIONER AIKEN: Now, when the
9 button is pressed, is there logs kept in the central
10 location that receives the message from the call
11 button?

12 MAJOR K.W. BERRY: No, sir. There are
13 no logs kept. The only time something is documented
14 in terms of receiving a call from an inmate, if there
15 is -- if there is a distress. Then something is noted
16 at that point in time.

17 COMMISSIONER AIKEN: Okay. What is
18 your definition of distress?

19 MAJOR K.W. BERRY: If an inmate is
20 saying, well, I'm sick, I need to see the doctor, or
21 something of that nature.

22 COMMISSIONER AIKEN: And what is the
23 process that you use to provide direct or indirect
24 supervision of this population when they are
25 restricted to their housing unit, particularly, the

1 cell. Three, four inmates to one cell. How is sight,
2 sound, supervision managed?

3 MAJOR K.W. BERRY: There are inmates in
4 those cellblocks. We have deputies actually make
5 30-minute walk-throughs through each cellblock in that
6 case. They actually walk through the cellblock.

7 COMMISSIONER AIKEN: And those are
8 30-minute intervals?

9 MAJOR K.W. BERRY: Yes, sir.

10 COMMISSIONER AIKEN: Okay. So you
11 don't have an officer that's placed in that particular
12 cellblock continuously during the time that the inmate
13 population is housed in their specific living cubicle
14 or area. Is that correct?

15 MAJOR K.W. BERRY: No, sir. The pod
16 concept is an open viewed area with windows completely
17 around in the pod there where the deputy can see out,
18 and it's usually -- if there is 96 inmates, there are
19 two deputies, this one-to-48 ratio. Every 30 minutes,
20 one deputy will -- they'll take turns walking through
21 the actual cellblock themselves.

22 COMMISSIONER AIKEN: So when you said
23 30-minute intervals, this officer may be walking
24 through this part, then walk through that part, then
25 they switch out with the control room. Is that what

1 you're saying?

2 MAJOR K.W. BERRY: Yes, sir.

3 COMMISSIONER AIKEN: Switch out with
4 the control room and then this officer will make a
5 30-minute round and then another 30-minute round, et
6 cetera?

7 MAJOR K.W. BERRY: We'll leave that to
8 their discretion as to which ones make the --

9 COMMISSIONER AIKEN: Yes, I understand
10 that. But there is a formal 30-minute making -- a
11 welfare check, so to speak.

12 MAJOR K.W. BERRY: Yes, sir.

13 COMMISSIONER AIKEN: And that's the
14 direct -- indirect supervision concept with that. Is
15 that correct?

16 MAJOR K.W. BERRY: Yes, sir.

17 COMMISSIONER AIKEN: Okay. And your
18 total population is 8,000 inmates, generally speaking?
19 Generically?

20 MAJOR K.W. BERRY: That was the average
21 daily population for the six years that I mentioned to
22 you, 2001 through 2006. Today's population is 9298.

23 COMMISSIONER AIKEN: Okay. Now, you
24 have those persons that are remanded for county
25 charges, that people are accused of violations of

1 criminal -- criminal codes while in the county and
2 they're picked up by your local police departments.
3 Is that correct?

4 MAJOR K.W. BERRY: That is correct.

5 COMMISSIONER AIKEN: And then there are
6 inmates that are already sentenced and awaiting going
7 to state facilities. Is that correct?

8 MAJOR K.W. BERRY: That is correct.

9 COMMISSIONER AIKEN: And then there are
10 inmates that are in federal jurisdictions that are
11 being housed for you. Is that correct?

12 MAJOR K.W. BERRY: That is correct.

13 COMMISSIONER AIKEN: And are there any
14 inmates or persons that are awaiting immigration
15 determinations housed in your facility?

16 MAJOR K.W. BERRY: Not at this time.
17 I'm not aware of any, sir.

18 COMMISSIONER AIKEN: Okay. Thank you
19 very much, sir.

20 CHAIRMAN WALTON: Okay. If no other
21 person, then we need to proceed with the next panel.

22 We appreciate you presenting your
23 testimony. Did you have anything in writing to
24 present to us?

25 MAJOR K.W. BERRY: No. I was not aware

1 that I would be testifying. However, that can be made
2 available to the Commission upon request.

3 CHAIRMAN WALTON: We'd appreciate that.

4 MAJOR K.W. BERRY: Okay.

5 COMMISSIONER FELLNER: And you will get
6 the standards to us, or should we make that request
7 directly to the jail commissioner?

8 MAJOR K.W. BERRY: It would probably be
9 a lot easier if had a direct request from the jail
10 commission to send that to you. They have electronic
11 ways getting it to you, more so than I would.

12 COMMISSIONER FELLNER: Okay. Thank
13 you.

14 CHAIRMAN WALTON: Thank you.

15 Next panel. We started this part of
16 the hearing, which is looking at the situation in the
17 state of Texas. Two of our next witnesses are related
18 to victims of sexual assault in detention facilities.
19 Unfortunately, those individuals who are the actual
20 victims we were not able to make arrangements to have
21 present. We will, however, seek to try and have their
22 testimony by way of affidavit or otherwise under oath
23 submitted so we'll have that on the record as
24 testimony that was presented to the Commission under
25 oath. Under the circumstances, however, we will have