

1 victimization on a bank account if you are looking  
2 at it. It really is a wide ranging issue that  
3 touches a lot of areas that I don't think anyone  
4 originally anticipated.

5 MR. MCFARLAND: Thank you very much.

6 MS. BRISBIN: Thank you.

7 MR. MCFARLAND: I want to start the  
8 questioning with a follow-up to your written  
9 testimony, Ms. Brisbin. You said IDOC, Idaho  
10 Department of Corrections is partnering with Idaho  
11 county jails and the Department of Juvenile  
12 Corrections.

13 Does the culture change need to start there  
14 where criminals get -- career criminals get their  
15 start in the jails and in the juvenile facilities  
16 and, if so, how do we -- this is for either of you  
17 -- how do we or should we be addressing that? How  
18 do you change the culture with respect to sexual  
19 assault in jails where there are very short-term

20 stays or in juvenile facilities?

21 MS. BRISBIN: Well, I believe that, as was

22 said earlier today, it's all about education,

23 education of staff and it's about zero tolerance

24 policy for sexually charged environment. And if

25 jail staff understand that, we all have the same

1 customers, there is a real realization that they  
2 move through both systems. We get them. We move  
3 them back to court. They come back to us. Anything  
4 they do within those, especially with county jails  
5 and the adult system in our state, anything that  
6 happens in either one of those environments is going  
7 to affect their housing, wherever they are going or  
8 coming from. So I think it has to start with staff  
9 and their understanding of what the law is and what  
10 to expect of them in the policy. And that will  
11 filter down to the inmates in the way that they are  
12 treated and their understanding of what they can or  
13 can't do.

14 MR. SEXTON: Follow-up to his question.

15 One, I am aware sheriffs in Idaho that have extreme  
16 problems with juvenile transport, especially the  
17 initial 42 hours -- excuse me, 48 hours.

18 Does Idaho have minimum standards for  
19 detention officers or correctional officers in

20 jails, in juvenile facilities? Do they have a

21 minimum standard for wage in those areas?

22 MS. BRISBIN: I am not an expert in that

23 area. I can't answer that. Honestly, I don't

24 know.

25 MR. SEXTON: Idaho is one of the states

1 that have seen a problem with specific federal  
2 standard regarding juvenile housing and the enormous  
3 mileage that is encountered between the juvenile  
4 facility for a sheriff or local police department.

5 MS. BRISBIN: I have not had good success  
6 with working with the juvenile system in our  
7 state.

8 MR. SEXTON: Thank you.

9 MR. MCFARLAND: Do you have comments about  
10 juvenile facilities and jails?

11 MR. HICKMAN: The answer to your question  
12 is, yes, you have to start there. I think that the  
13 environment and culture is, for lack of a better  
14 description, overlay each other as those populations  
15 transfer between the facilities. I think that  
16 predatory behavior and creation of victims happens  
17 in the juvenile facility and you certainly have to  
18 address that. The behaviors are the same I think in  
19 regards to those behaviors manifest to the people

20 that are victimized.

21 MR. SEXTON: Would you say it is a fair  
22 statement that we see more younger, more predatorial  
23 offenders?

24 MR. HICKMAN: I don't know what the  
25 research says, but anecdotally I do have to agree

1 with that.

2 MR. SEXTON: I have a question on your  
3 50,000-foot analysis. I have been an American  
4 Corrections Association Commissioner on  
5 accreditation for eight years. One thing that I  
6 have noticed in that eight years is that just about  
7 every state institution that comes before us for  
8 accreditation is not funded properly, is not staffed  
9 properly, is not maintained, does not have funding,  
10 all those items that you said. And pretty much  
11 every one of them has said that their legislators  
12 want to fund mental health or education or juvenile  
13 crime programs within schools or whatever.

14 Is the bottom line of PREA going to be a  
15 lawsuit? Is it going to take somebody to sue to be  
16 able to implement PREA in a mechanism that you are  
17 talking about?

18 MR. HICKMAN: I had a conversation with  
19 someone in PREA and said that the bottom line very

20 well might be that. Both on the work that you are  
21 doing and the work that they are doing under the  
22 commission. It is clearly from a commissioner's  
23 standpoint I clearly -- if you don't do something  
24 with design standards and protocols that you can  
25 comply with, you clearly have set the ground for me

1 being sued in class action. It is going to be  
2 driven out of the courts. So, the answer to your  
3 question is I would not be surprised that would be  
4 end result, the change would come out of the court  
5 system.

6           The other thing that has to happen is that all  
7 of us in corrections or any executive in government  
8 is trying to manage within the allocation that you  
9 have. I don't know that we have been educated  
10 adequately or have brought in resources adequately  
11 that allows us to do some things in your budget that  
12 can get you some program dollars out of it. In some  
13 other operational areas that you work in, in your  
14 operating expense and the things that you do that  
15 are fixed costs, are there things you can do in your  
16 fixed cost?

17           What happens is, is that if you are created an  
18 administrator and say that I can reduce funding in  
19 my clothing line or reduce funding in my electrical

20 line, whatever that operation expense is, you  
21 generally are not given the funds back. You can't  
22 -- it goes to the bottom line of the general fund.  
23 So you now have done a great job of managing within  
24 your allocation to be actually not rewarded for it.  
25 So I think some of the change has to happen in the

1 process of how government entities are managed to  
2 accomplish the programs that we want to have  
3 accomplished. So people aren't given the latitudes  
4 to operate within those budgets.

5 MR. MCFARLAND: Ms. Brisbin, I am  
6 fascinated by your comment on Page 2 of your written  
7 testimony that any training delivered to COs and  
8 medical staff should be accompanied by written  
9 documentation in the form of competency tests.

10 Has that been implemented?

11 MS. BRISBIN: Yes.

12 MR. MCFARLAND: Favorably so?

13 MS. BRISBIN: I believe so, yes. Any of  
14 the training in this area that we're delivering,  
15 including staff sexual misconduct, they are required  
16 to take that written test and that test is  
17 permanently retained in their file. I mean, that  
18 documentation piece is essential for our department  
19 in showing that we have not only attempted to

20 educate them in the area, but also later when they  
21 make a claim that they weren't told they weren't  
22 allowed to have sex with an inmate or some other  
23 thing related to that, that proves, yes, you did  
24 received the education and the date and time.

25 MR. SEXTON: That is an accepted practice

1 of most law enforcement training facilities, to have  
2 a follow-up exam and there is one in the California  
3 --

4 MR. MCFARLAND: Probably put there by a  
5 lawyer.

6 MR. SEXTON: Probably so.

7 MR. MCFARLAND: I would like to thank you  
8 both for your contribution. Certainly, Secretary  
9 Hickman, your global view, so to speak, in terms of  
10 the issues kind of identified and laying out food  
11 for thought. You mentioned values at the very end  
12 of your presentation.

13 And to pick right up with you, Ms. Brisbin,  
14 with your maintaining dignity and your initial  
15 statement and your vision and your values, which I  
16 quickly glanced over and find them quite  
17 interesting. My question to you would be: What is  
18 the buy-in for this document in terms of its  
19 effectiveness among inmates?

20 Referring to the maintaining dignity handbook

21 for inmates.

22 MS. BRISBIN: I do have an opportunity, in

23 fact, any of the allegations or incidents that we

24 have had in the two years that I have actively been

25 working on this project, I have taken that

1 opportunity and personally interviewed the victims,  
2 and in some cases talked to other witnesses; and,  
3 you know, I think that offenders like to be treated  
4 with respect just like the rest of us do.

5           The theme I think does resonate with them. I  
6 have heard them say, "If I was treated with more  
7 respect this wouldn't happen." So I hear offenders  
8 echo that back to me. "Well, if we were treated  
9 better, these things wouldn't happen."

10           MR. SEXTON: Treated by who?

11           MS. BRISBIN: Anyone in general, other  
12 inmates or staff. I am just using that as an  
13 example. It's the idea that if we treat people with  
14 respect, then they will behave better than they do  
15 or might have a natural tendency to. To me it is  
16 all wrapped up in professionalism.

17           MS. ELLIS: You also indicated that as  
18 closely as possible victims are treated like victims  
19 as you said on the outside.

20 MS. BRISBIN: In the community.

21 MR. ELLIS: In the community. Victim  
22 treatment in the broader society, it is a process.  
23 It is ongoing. We are not where we need to be.  
24 It's been a struggle. The victim movement started  
25 some 30 years ago, and we still are training. We

1 still are researching. We still are working on ways  
2 in which we can address the very special needs of  
3 victims of this particular crime category, period  
4 experience. Because I do believe very firmly that  
5 while there are certain things that we can lump  
6 together as far as victimization, regardless of the  
7 crime category, each victim is different and that  
8 experience plays out in different ways.

9 MR. MCFARLAND: Ms. Brisbin, does IDOC  
10 expect prison counselors, mental health  
11 professionals to report immediately if they are  
12 confidentially told of sexual assault?

13 MS. BRISBIN: Our policy says that all  
14 staff will report, and that is the way the medical  
15 staff and the clinicians are trained. I have yet to  
16 have any employee that has an issue with that. They  
17 understand that this is evidence of a new crime.  
18 They need to tell, and they do.

19 MR. MCFARLAND: How about any policy

20 regarding sexually explicit magazines or literature

21 books?

22 MS. BRISBIN: We are -- I made a comment

23 earlier today to one of the NIC people that is here

24 that the success that we have had in this area.

25 Other people have decided to piggyback on that and

1 use the success that we have had with PREA to get  
2 some other things taken care of that we needed to  
3 do. One of those is the pornography policy. We are  
4 in the final draft form of having all pictorial  
5 pornography removed from our institutions.

6 MR. MCFARLAND: Does that include  
7 television access?

8 MS. BRISBIN: That is a good question. I  
9 don't know the answer to that.

10 MR. MCFARLAND: Sec. Hickman, do you see  
11 any policy implications for this sort of -- should a  
12 correctional system look to pornography, either  
13 written or television, as a way of reducing a  
14 sexualized environment as Ms. Brisbin described?

15 MR. HICKMAN: I think you should. I think  
16 that the challenge becomes what are the legal rights  
17 of the individuals for the administrators. I think  
18 from a policy standpoint you're absolutely right.  
19 If you can desexualize the environment so much as

20 you can, you should.

21 MS. ELLIS: In the handbook, again going  
22 back to issue of consensual sex, I see you have an  
23 education piece.

24 MS. BRISBIN: Yes.

25 MR. ELLIS: Where you actually attempt to

1 educate in regards to consensual sex. Will you talk  
2 about that?

3 MS. BRISBIN: I am not sure where.

4 MS. ELLIS: On Page 12 of the handbook.

5 MS. BRISBIN: I see what you are saying.

6 Well, as we were talking about earlier about  
7 investigations, one of the things that happened  
8 early on when we had a few of these investigations,  
9 you know, it is incredibly difficult for an  
10 investigator to sort out what is coercive and what  
11 is consensual. We do have inmates, either one of  
12 them will say I wasn't manipulated in any way, it  
13 was my free choice to do this. Everybody knows that  
14 is going to continue to happen. No matter what we  
15 do as a system, there will still be acts that really  
16 are consensual sex between two inmates. We have to  
17 discipline them for that. They also have been  
18 disciplined for that behavior.

19 But all those subtleties that come into this.

20 Was I coerced? Was there intimidation used? Was I  
21 offered a bribe to do this? Our investigator never  
22 used to look at that. So we really made some good  
23 headway in this area.

24 MR. HICKMAN: I find it interesting from  
25 my global perspective that you have debate about

1 consensual sex and debate about condoms being  
2 distributed within prisons as a means of a public  
3 health issue. So I think when you talk about how  
4 you sort through what is the right policy direction  
5 for you to go, that conversation is far more complex  
6 than we take it to be.

7 MR. MCFARLAND: What is the current policy  
8 of CDCR?

9 MR. HICKMAN: The law was vetoed by the  
10 governor. But every session you are going to find  
11 -- in many states you are going to find there is  
12 going to be legislation that is going to come  
13 forward, that from a public health standpoint you  
14 very well might need to provide condoms in prison  
15 because the reality is you know there is sex taking  
16 place.

17 MR. MCFARLAND: So does that say to the  
18 public and its elected officials that we'd rather  
19 spend money on condoms than cameras?

20                   MR. HICKMAN: Very well could. Very well  
21 could. A lot of people that are not educated in  
22 regards to the realities of what those environments  
23 are have acquiesced to the environment, to the  
24 sexually charged environment. It is part of the  
25 experience in prison.

1           I think a key component of what we do is to  
2   educate those policy-makers and those legislators of  
3   what the reality is of that overtly sexual  
4   environment.

5           MR. SEXTON: Can we climb back up to that  
6   50,000 feet? Is it time to have conjugal visits?

7           MR. HICKMAN: I think you can go back and  
8   look at conjugal visits. It varies from state to  
9   state. California has a very strict conjugal  
10  visiting law. I think that when you look at reentry  
11  and you look at the ability for us to ensure that  
12  people are successfully reintegrated into society,  
13  family relationships are of the utmost importance.  
14  I think a revisitation of conjugal visits is not  
15  bad. The analysis has got to be a little more  
16  detailed than some of the broad-brush approach that  
17  might have been taken in the past. To say that is  
18  it appropriate to have a family visit, whether it is  
19  conjugal, whoever the family member is, is it

20 appropriate to, from a reentry standpoint, at a  
21 certain point in time with an individual's  
22 incarceration to reunify them? That reunification  
23 has to happen. And it may be done from a more  
24 programmatic standpoint than a relationship  
25 standpoint. So the visiting process is more

1 programmatically designed to accomplish reentry and  
2 the relationship building that you are doing as  
3 opposed to the belief that it is just a sexual  
4 relationship.

5 MR. MCFARLAND: Ms. Brisbin, I want to  
6 close with a question about Idaho's community sexual  
7 assault response teams. Can you tell me whether  
8 this is a new phenomenon or at every facility do you  
9 have SART teams? Who are included in them?

10 MS. BRISBIN: In some of our larger  
11 counties in Idaho they have regular community SART  
12 teams, which include a nurse examiner.

13 MR. MCFARLAND: Who else is included?

14 MS. BRISBIN: It is usually a detective  
15 and a nursing examiner and victim coordinator and  
16 sometimes a fourth person, depending on the  
17 incident. That is the community model. We looked  
18 at that and decided that we could do something like  
19 that inside the institution that would allow us to

20 educate that inmate victim a little bit in the  
21 process of what is going to happen when they arrived  
22 at the hospital. And I would like to say that the  
23 victim coordinators in our state were not thrilled  
24 about this law. When I went to speak to them for  
25 the first time, they did not see our inmates as

1 victims. They don't want to see them as victims.

2 I now have knocked on their door so frequently  
3 that I have one of the main victim coordinators for  
4 the prosecutor's office who is going to come out and  
5 help me teach a section for our clinicians on what  
6 happens when they get to the hospital. I won't say  
7 that I have completely converted; at least they are  
8 a little bit willing to consider the possibility  
9 that we do have individuals who are victimized. But  
10 we have tried to model that community model a little  
11 bit inside the institution.

12 MR. SEXTON: Can I ask a follow-up? Your  
13 prison rape response is basically the same if a  
14 female gets raped in the outside world of somewhere  
15 in Idaho; is that correct?

16 MS. BRISBIN: We have tried to follow that  
17 model.

18 MR. SEXTON: It is a standardized  
19 victimization process that is being carried over

20 into the facility?

21 MS. BRISBIN: Right. We have really tried  
22 to stay close to that.

23 MR. MCFARLAND: Mr. Hickman, what is  
24 CDCR's policy or use of SARTs, sexual assault  
25 response teams?

1                   MR. HICKMAN: You will have to ask someone  
2 else to respond to that. It might vary.

3                   MR. MCFARLAND: Ms. Hardy.

4                   MS. HARD: We actually have one  
5 institution that is running a pilot SART program.  
6 It is our institution at Tehachapi, California  
7 Correctional Institution. All of the rest of our  
8 institutions are taking their inmate victims out to  
9 the community hospitals for the SART exam and then  
10 meeting with victim advocate at all the requirements  
11 of the law through the process in the communities.

12                   MR. MCFARLAND: Kind of ruminating aloud  
13 here. I don't understand how we have staff to  
14 transport, but we don't have staff to prevent it in  
15 the first place in some of the overcrowded  
16 facilities. Am I missing something?

17                   We were in a gym in Old Folsom, 135 folks  
18 tripled bunked in a gymnasium. There is nobody in  
19 the gun rack, the gun balcony. He leaves at 2:45.

20 So for the entire night the only way you know what  
21 is going on in the other end of the gym is one of  
22 those concave mirrors. The showers were very  
23 visible, very close to the guards. The three guards  
24 for 136 inmates.

25 But when the person gets raped or alleges

1 rape, we suddenly have one to two folks who can take  
2 X number of hours to drive this individual to ER and  
3 sit with them and watch him? Am I missing  
4 something?

5 MR. HICKMAN: You are not missing anything  
6 at all. What you are saying is a response to both  
7 from a fiscal standpoint, both from a physical  
8 standpont and from a psychological standpoint, to a  
9 response to an incident.

10 So if you look at correctional practitioners,  
11 not just at Folsom Prison, people respond to  
12 incidents. So then you make a different deployment  
13 decision in order to staff the incident. If, in  
14 fact, you don't plan for a riot, but if you do have  
15 a riot where do the staff come from? You take them  
16 from other places. That critical incident response  
17 is what you are seeing, people have capability to  
18 think their way through and the staff.

19 MR. SEXTON: In the California state

20 prison system you have some sort of response team, a  
21 critical response team on duty every shift and you  
22 know that if something happens --

23 MR. HICKMAN: You have a protocol.

24 MR. SEXTON: Somebody's designated. I am  
25 assuming somebody is designated?

1 MR. HICKMAN: Yes.

2 MR. SEXTON: If something happens, one of  
3 those folks on any given shift will go from point A  
4 to point B.

5 MR. HICKMAN: Right.

6 MR. SEXTON: One of those folks on any  
7 given shift is going to be pulled?

8 MR. HICKMAN: Right. Secure point A and  
9 go to point B.

10 MR. MCFARLAND: Ms. Still.

11 MS. STILL: We also have some of our  
12 evidence officers and our investigative services  
13 staff. They might be on duty 24 hours a day. They  
14 are on call, so they are called back in to respond  
15 to a significant incident.

16 MR. MCFARLAND: I want to thank  
17 Ms. Brisbin and Mr. Hickman as well as Ms. Hardy and  
18 Ms. Still for their very helpful and candid  
19 testimony at 50,000 feet and ground zero.

20 Thank you very much.

21 The panel will be adjourned for lunch until

22 2:00 p.m. sharp.

23 (Panel 3 concluded at 12:30 p.m.)

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