

1 yours.

2 MR. DOVEY: My apologies for being late.

3 Sometimes things can't be helped. Anyway, we do  
4 appreciate your time as well coming out here today  
5 to California, and we understand that this is a  
6 national strategy that we are looking at to try to  
7 improve corrections' response to a subject that has  
8 long been overlooked, I believe. Something that we  
9 joked about, not wanting to talk about. It's been  
10 subject of a lot of a lot of scrutiny, and now we  
11 are under federal law to develop a strategy that  
12 will improve our performance in dealing with the  
13 issue. So I would like to go over my testimony. I  
14 believe it is relevant, and I think I have some  
15 something to offer. So thank you, again.

16 MR. MCFARLAND: So do we.

17 MR. DOVEY: Again, I am Director of the  
18 Division of Adult Institutions in the Department  
19 and, as such, I have the responsibility for 33 adult

20 institutions, 42 camps and 13 community correctional  
21 facilities. California houses approximately 173,000  
22 offenders, 161,000 men and 11,000, a little over  
23 11,000 women.

24 MR. MCFARLAND: Excuse me. Can you all  
25 hear or does he need to move -- move your microphone

1 closer. That would be great.

2 MR. DOVEY: Protecting inmates from sexual  
3 violence has been and continues to be one of the  
4 Department's fundamental responsibilities. I have a  
5 little bit of history. Upon assuming one of my  
6 previous assignments as warden of the California  
7 Institution for Women, I came at a time when there  
8 was quite a number of investigations of staff sexual  
9 misconduct. I quickly identified one of the most  
10 critical issues facing the institution was the  
11 systemic problem of staff and offender misconduct.  
12 A significant number of staff when I went there were  
13 under investigation, unfortunately, all related  
14 allegations to staff sexual misconduct.

15 At the time the Department only had  
16 administrative codes available to address this type  
17 inappropriate and illicit behavior. One serious  
18 impediment to holding staff accountable and changing  
19 the culture was the lack of any serious

20 ramifications or repercussions. We used to allow  
21 people to resign in lieu of anything else. There  
22 was no Penal Code section that made it illegal. I  
23 can remember inmates telling me that they are in  
24 love and the staff attorney telling me there was  
25 nothing we can do because it was consensual. There

1 was no law that says consensual sex was illegal.  
2 The highest penalty level available for this type of  
3 illicit behavior at the time was administrative in  
4 nature, with the most serious consequences being  
5 termination from civil service.

6 In 1995, the State of California adopted a new  
7 law, made its first attempt rather, to address  
8 sexual violence against incarcerated individuals by  
9 codifying Penal Code Section 289.6, which made  
10 sexual acts between a staff person and an offender a  
11 felony, punishable by imprisonment, fines and I have  
12 added registration as a sex offender.

13 So we thought we had the problem solved. We  
14 had a new Penal Code that would be the end of it. I  
15 find out we had another barrier, and that was, as we  
16 were completing the open investigations and when  
17 warranted those cases would be referred to the  
18 District Attorney for prosecution, I found out, lo  
19 and behold, this was not a very high priority for

20 the District Attorney in my area. And, in fact,  
21 even when we had what I would consider solid,  
22 irrefutable DNA evidence that a crime had been  
23 committed, and we could prove it, the DA declined to  
24 prosecute.

25 So when I met with them to follow up, they

1 were unaware that the Penal Code had even changed,  
2 unaware that there was a law in the books that now  
3 made that illegal. Part of my job as a warden then  
4 was to try and educate, to make sure people  
5 understood the ramifications.

6 So the District Attorney's office played a key  
7 role in the resolution of this very serious issue.  
8 I sought their assistance and ultimately we were  
9 successful in getting prosecutions.

10 For today's hearing I have reviewed the  
11 questions that the panel provided, and I know Wendy  
12 has started to provide some of the answers. And we  
13 have Ms. Hardy and Warden Malfi here. If you have  
14 not already covered it, one of the questions: What  
15 factors in the environment are not conducive to  
16 deterring sexual assaults in prison?

17 This is one of the issues that we asked  
18 ourselves as well. And I guess before I answer  
19 this, I have to tell you something that was not part

20 of my written testimony. But as we look at this  
21 issue today, we are not looking at just prison rape.  
22 We are looking at all aspects in California of  
23 prison sexual violence. Whether that is staff on  
24 inmate, inmate on inmate, inmate on staff, it is all  
25 critical. If we don't look at the whole picture,

1 then we are going to be missing something. The goal  
2 is to make it a safe environment for not just our  
3 offenders, but for our staff and employees that work  
4 in prisons as well. So it's all very important.

5 Addressing one piece is not going to get you,  
6 I think, the sum total where you need to go. So we  
7 are looking at everything from indecent exposure to  
8 staff on staff, inmate on inmate, the entire fabric  
9 of violence in prisons and what is generating it.

10 In general, we have a very high inmate head count.  
11 We have inmates in nontraditional housing. We call  
12 it -- let's be real, we call them ugly beds in  
13 California. Nontraditional is a polite way to say  
14 that, but they are ugly beds. So --

15 MR. MCFARLAND: By that you mean in the  
16 gymnasium?

17 MR. DOVEY: Anywhere we have inmates  
18 stacked up three high: in corridors, in gyms, in day  
19 rooms, places that there never meant to house

20 inmates.

21           So, anyway, to your question, though, to be  
22 responsive. The items that are conducive to  
23 deterrence of in-custody sexual assault include  
24 creation of a law that makes sexual acts between  
25 staff and offenders a felony. Like I mentioned,

22

CAPITOL REPORTERS (916) 923-5447

1 when I had investigators and other enforcement  
2 officials telling me because there was no law that  
3 prohibited consensual sex I couldn't believe it.  
4 But again I hadn't looked at it. So part of this is  
5 awareness on our part.

6           The development of comprehensive programs  
7 designed to support inmate safety. Important  
8 components of that program include staff and  
9 offender training and an awareness campaign. Would  
10 you call that a marketing campaign or just a general  
11 staff awareness is part of an agency plan to make  
12 staff and inmates aware of what the program is, what  
13 the expectation is and what the protocols are and to  
14 follow up on that.

15           Creating an environment where the victim feels  
16 safe to come forward and report sexual assaults.  
17 Too frequently I am afraid to report that, because  
18 we haven't had a great plan, when victims come  
19 forward we lock up the victim and leave the

20 perpetrator and the thug and people that are  
21 responsible for these crimes in the general  
22 population. Bad response.

23           Swift and thorough investigations of alleged  
24 assaults. Of course, investigating these kinds of  
25 cases, as far as ultimate kinds of expertise,

1 referral of assaults to the DA for prosecution,  
2 providing support and external counseling services  
3 for the victim. Creating processes and protocols  
4 that do not inadvertently revictimize the victim,  
5 like, not automatically moving the victim to a  
6 higher level of custody, locking them up in ad seg  
7 unless the individual case factors require that  
8 their safety might be in jeopardy.

9           Identifying and segregating inmate sexual  
10 predators from the general population. That is  
11 where we target some of our resources. And creating  
12 partnerships with outside stakeholders, such as the  
13 National Institute of Corrections who have really  
14 been an asset to us in helping us develop our  
15 agency's plan. District Attorney's office, in  
16 particular in California I've worked closely with  
17 California District Attorneys Association. I have  
18 written them letters. We meet through the auspices  
19 of the Office of Inspector General. We have created

20 a prison task force. In our next meeting I will be  
21 addressing them on the whole issue of PREA and what  
22 we are doing.

23 I would not want some of the wardens to  
24 experience some of the same problems I went through.  
25 It seems that we would use this great opportunity on

1 trying to educate them on what we are doing and why  
2 we need their help.

3 Engaging with law enforcement, local rape  
4 crisis centers and other operational experts. For  
5 example, Stop Prison Rape. I asked Ms. Still to  
6 make sure and that they were partners at the table  
7 when we develop our agency plan because they are one  
8 of our stakeholders, and they certainly have a voice  
9 and offer a lot in what we are trying to do.

10 And finally, research. To be able to access a  
11 body of data and to help us develop that body of  
12 data, to be able to reach out to the research  
13 community to help us establish that as our baseline.

14 So we have identified the factors and  
15 environments not conducive to deterrence of sexual  
16 assault in prison include, I mentioned this, inmate  
17 overcrowding and unconventional housing assignments,  
18 historical culture and attitude and bias related to  
19 inmate-on-inmate sexual misconduct. We have all

20 seen that in the past.

21           Physical plant limitations creating a lack of  
22 visibility. And when you have inmates crammed in  
23 every nook and cranny, officer supervision of these  
24 inmates at best is strained. Lack of a  
25 comprehensive education and awareness program. A

25

CAPITOL REPORTERS (916) 923-5447

1 lack of video monitoring, cameras to assist with  
2 prevention and detection of offender assaults. Lack  
3 of effective investigative or housing protocols.  
4 Lack of a classification system that appropriately  
5 identifies and separates inmate sexual predators  
6 from the general population when there is violation.  
7 And that was it.

8           On the next question that I had was: How to  
9 scrutinize the training of correctional officers and  
10 medical staff on prison rape? How do we focus that  
11 and galvanize our resources?

12           Scrutinizing the training of correctional  
13 officers and medical staff on prison rape should  
14 begin with the collection of existing training  
15 materials. We have done that. In fact, in response  
16 to the help from NIC and other agencies we have  
17 already begun an extensive training program. I know  
18 Ms. Still is going to talk about that. In addition  
19 to that, any policies that are reviewed or newly

20 recreated will need to be incorporated in the  
21 revised curriculum. All too often when we try to  
22 solve problems, sometimes we do it from the hip. In  
23 other words, it is a knee-jerk action sometimes. I  
24 know all agencies experience that. But our response  
25 to issues should be a plan, a systemized, systemic

1 plan and not just knee-jerk reaction, and that is  
2 critical.

3 I can give you an example. It is more related  
4 to gender response than it is to this issue. But I  
5 can remember as a warden getting memos from the  
6 headquarters, and I was at the time a warden of a  
7 women's prison. And the memo I am thinking about  
8 directed all the wardens to be very careful and  
9 instruct their staff, that when doing cell  
10 extractions of inmates, to make sure that after the  
11 inmates was extracted to put the offender in a clean  
12 pair of boxer shorts.

13 And so I called headquarters. Do you really  
14 want to put the women in a clean pair of boxer  
15 shorts? Sometimes the policy, although it says to  
16 all wardens, we have to be careful that we're not  
17 knee-jerk reacting and that our responses are  
18 appropriate. And sometimes headquarters, and that  
19 includes me, we have to be more thoughtful in what

20 we are doing.

21 Policy review and training curriculum

22 committee should be created to ensure continuity

23 between new policy and revised curriculum. Training

24 lesson plans should be well defined and clearly

25 outline expectations for compliance with the policy,

1 and this training should be provided at least  
2 annually in a classroom setting. It should further  
3 enhance or be enhanced and enforced via on-the-job  
4 training in the work units by area supervisory  
5 staff, and management must make this training a  
6 priority to help change the institutional culture.

7 Management must hold staff accountable for any  
8 violations of policy which will further support the  
9 training and reinforce behavior expectations.

10 This kind of concludes my written testimony,  
11 but, again, I appreciate your coming to California.  
12 I look forward to what we can learn together in the  
13 next couple of days, and we are genuinely and  
14 earnestly engaged in the issue of eliminating rape  
15 in our prisons.

16 MR. MCFARLAND: Thank you, Mr. Dovey. How  
17 long do we have you here? When did you have to  
18 leave?

19 MR. DOVEY: I am subject to being called

20 any second, but my plan is to be with you for two  
21 full days because I think it is important for you to  
22 come to California. It is important enough to me to  
23 try to be here.

24 MR. MCFARLAND: I have a number of  
25 questions, all of us have a number of questions we

1 want to direct to the whole panel. But if you had  
2 to leave in five minutes, we might want to direct  
3 our questions to you. But in your absence --

4 MR. DOVEY: At this time, sir, I plan to  
5 be here for two days.

6 MR. MCFARLAND: We move to Ms. Hardy. I'm  
7 sorry, to Ms. Still.

8 MS. STILL: Thank you.

9 In response to your second question: Which  
10 system protocols and policies require examination?

11 All policies related to the following items  
12 will require review and adjustment, based upon the  
13 legal requirements of PREA, and then in California  
14 our compliance with AB 550.

15 These areas include: reception and housing  
16 protocols, incident reporting, medical processing,  
17 transportation, follow-up mental health care,  
18 investigation, discipline, and incident data  
19 collection and research. Also, providing

20 information to the inmate population about the  
21 policy is critical. Ensuring that all staff, as  
22 Mr. Dovey said, are trained and have a clear  
23 understanding of the responsibility will be  
24 essential to the success of the program.

25           During the investigatory process thought

1 should be given not only to completing a thorough  
2 investigation, but also analyzing the circumstances  
3 of the events that took place to determine if  
4 procedural or policy changes are necessary.

5           The Department has embarked upon an extensive  
6 training program. The videos that the NIC sponsored  
7 or paid for and the Moss Group coordinated were  
8 really important. We've incorporated those videos  
9 into our program. In addition to that, one of the  
10 very first steps that we took was we started with  
11 the top executive staff within the Department. We  
12 had a statewide warden executive staff meeting, and  
13 a PREA expert, Dr. Owens, provided training to all  
14 of the wardens and our leadership, as well as  
15 Dr. Val Jenness also provided training. So we  
16 approach it from not only a law-policy program, but  
17 also research, what are we doing to help inform our  
18 plan.

19           In response to question No. 5: What are the

20 likely barriers to reporting accurately an accurate

21 investigation and deterring prison rape?

22           The barriers we found include the victim's

23 embarrassment of reporting an incident, inmates

24 belief that the report will not be taken seriously,

25 inmate's concern that the report of an assault will

1 not be kept confidential. Inmates have also  
2 expressed a fear of being placed in ad seg, which  
3 could include losing their job and assignment and  
4 property, and that is, again, the thought of  
5 revictimizing the victim. Inmates fear of reprisal  
6 from staff.

7           Barriers to accurately investigating. In many  
8 cases investigators have expressed an inability to  
9 corroborate the facts related to the incident, but  
10 by nature of the incident itself. Typically, sexual  
11 assaults take place without witnesses in remote or  
12 isolated areas. In addition, late reporting by  
13 inmates is typical and evidence is lost due to the  
14 delay.

15           Barriers to deterring prison rape. Historical  
16 culture, attitudes and bias related to  
17 inmate-on-inmate sexual misconduct. Staff believe  
18 that sexual misconduct is not occurring. Inmate  
19 overcrowding and unconventional housing assignments

20 in areas such as gymnasiums. Physical plant  
21 limitations create a lack of visibility. If you  
22 combine overcrowding and lack of visibility, you  
23 have a very dangerous situation.

24 Lack of a comprehensive education and  
25 awareness program. Again, CDC had developed an

1 extensive program. Lack of cameras to assist with  
2 the prevention and detection of offender assaults.  
3 Lack of effective investigative, reception center  
4 and housing protocols. Jurisdictions must have  
5 serious legal consequences for incidents of sexual  
6 misconduct.

7 This concludes my written testimony, and I  
8 will be available for any questions that the panel  
9 may have.

10 MR. MCFARLAND: Thank you.

11 Ms. Hardy.

12 MS. HARDY: I am Nancy Hardy. I would  
13 like to thank the panel for the opportunity to  
14 testify before you today. I am a correctional  
15 administrator assigned to the Special Projects Unit  
16 for the Division of Adult Institutions, and I was  
17 responsible for sort of taking PREA and working  
18 through the process of developing the program, and  
19 we're very close to implementation of the whole