

CAPITOL REPORTERS (916) 923-5447

UNITED STATES DEPARTMENT OF JUSTICE

OFFICE OF JUSTICE PROGRAMS

HEARING ON SEXUAL VIOLENCE

BY THE REVIEW PANEL ON PRISON RAPE

WEDNESDAY, NOVEMBER 15, 2006

9:00 A.M.

FOLSOM STATE PRISON - LARKIN HALL

CALIFORNIA

REPORTED BY:

ESTHER F. SCHWARTZ

CSR NO. 1564

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ATTENDEES

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TASK FORCE FOR THE FAITH-BASED
AND COMMUNITY INITIATIVES
U.S. DEPARTMENT OF JUSTICE

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FAIRFAX COUNTY, VIRGINIA
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CALIFORNIA OF DEPARTMENT OF CORRECTIONS
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ATTENDEES (CONT.)

PANEL 7:

TERRY KUPERS, M.D. M.S.P.
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CALIFORNIA STATE PRISON - SACRAMENTO

JOE BAUMANN, CORRECTIONAL OFFICER
CALIFORNIA CORRECTIONAL PEACE OFFICER'S
ASSOCIATION

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1 CALIFORNIA STATE PRISON - SACRAMENTO

2 WEDNESDAY, NOVEMBER 15, 2006, 9:00 A.M.

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4 MR. MCFARLAND: Good morning. This is day
5 two of the first public hearing of the Review Panel
6 of Prison Rape. I want to thank again all of the
7 representatives of the California Department of
8 Corrections and Rehabilitation for their
9 accommodations as well as their testimony. We are
10 very grateful for the opportunity to hear from so
11 many qualified witnesses.

12 We will dispense with any further
13 introductions or comments unless any of the
14 panelists have anything to say. We may have some at
15 the end of the day. At this time we'll call our
16 first panel of witnesses for today. I have Officer
17 Wesley Lewis and Officer Tami Viles. If they could
18 come forward, please.

19 Good morning. Would you mind being sworn in?

20 (Oath administered by Mr. McFarland.)

21 MR. MCFARLAND: Have a seat. Our first

22 witness will be Officer Wesley Lewis.

23 ---oOo---

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PANEL 5

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MR. LEWIS: Hi, good morning.

4

MR. MCFARLAND: Do you have any initial

5

remarks or opening statement that you wanted to

6

make?

7

MR. LEWIS: Actually I don't. I was asked

8

to write down my testimony. Due to my work schedule

9

I was not afforded that opportunity.

10

MR. MCFARLAND: We are grateful that you

11

are here. Let me just ask if you could, first of

12

all, briefly summarize your professional experience

13

in corrections.

14

MR. LEWIS: I have 22 years of experience.

15

The last two years I have been in training as the

16

in-service sergeant at CSP-Sacramento, Level 4

17

institution, right next door. Prior to that, I

18

served as an academy instructor at the Galt academy

19

for basic correctional officers. I was there for

20 approximately eight years and have been a supervisor
21 for a little over 16 years. Primarily, which most
22 of that have been served here at CSP-SAC.

23 MR. MCFARLAND: The in-service position
24 was what?

25 MR. LEWIS: I train -- we rotate the

1 officers off POST and give them off-POST training.
2 They're required to have 52 hours of training each
3 year. We give them a 40-hour block, and we pull
4 them off POST and go through the different policies
5 and procedures of the Department.

6 MR. SEXTON: Are you in-service training
7 coordinator?

8 MR. LEWIS: Not the coordinator. I am
9 just one of the sergeants, one of the trainers.

10 MR. MCFARLAND: What is your understanding
11 of the definition of prisoner sexual assault? What
12 does that mean?

13 MR. LEWIS: Well, as far as my
14 understanding, effective 2002, President Bush signed
15 into law the PREA, Prison Rape Elimination Act. In
16 2005, Governor Schwarzenegger signed a very similar
17 law into policy. There are not only state, but
18 federal policies regarding raping of prisoners,
19 sexual misconduct among both prison staff and

20 inmates, as well as inmate sexual relationships. It
21 is defined and make up the PREA policy.

22 MR. MCFARLAND: Do you have, as a trainer,
23 some written definitions of what constitutes sexual
24 misconduct and sexual assault?

25 MR. LEWIS: Yes. We pulled it out of the

1 policy. I brought just for your information a
2 handout which we utilize for the class. It is a
3 PowerPoint slide presentation and it gives all the
4 definitions of what a victim is, what coercion is,
5 what is rape, what is defined as rape per the
6 policy. We go over that and we talk about the
7 officer's responsibilities, signs and symptoms to
8 recognize and look for in inmates that may, in fact,
9 have been raped. We talk about the protocols to be
10 followed should the officers deem it necessary or
11 believe that some type of sexual misconduct has gone
12 on, and then what their reporting responsibilities
13 are.

14 MR. MCFARLAND: When was the last time
15 that you were assigned to a unit as a front-line
16 correctional officer?

17 MR. LEWIS: I have not worked -- I have
18 not officially worked in the units as an assignment
19 since 2004. I do work overtime down in the

20 facilities, usually five or six days a month, but
21 for the last two years I have been pretty much a
22 trainer.

23 MR. MCFARLAND: But you were on line, so
24 to speak, when the PREA requirements were
25 incorporated?

1 MR. LEWIS: Correct.

2 MR. MCFARLAND: So you know how it works?

3 MR. LEWIS: I think I have a pretty good
4 idea how the protocol works, yes.

5 MR. MCFARLAND: Is there an operating
6 policy or protocol/procedure for what to do when you
7 hear, when a correctional officer hears about an
8 alleged sexual assault? Is it written down
9 anywhere?

10 MR. LEWIS: I know that with the initial
11 handout and rollout of the guidelines that we were
12 given, there were protocols for what the first line
13 supervisor's responsibilities were, what the watch
14 sergeant's responsibilities were, what medical's
15 responsibilities were. The investigator unit had
16 specific responsibilities. When we were handed that
17 original protocol, that was all in the tentative
18 phases because it was waiting final approval.

19 They were saying, "Hey, this is what is coming

20 and this is what you need to be aware of." And they
21 were training us. I believe that is signed off and
22 passed. I have not seen the official protocols on
23 that. I'm aware that there are certain protocols,
24 but I have not seen it in writing.

25 MR. SEXTON: Mr. Lewis, are you familiar

1 with Operational Procedures, OP 136?

2 MR. LEWIS: I believe that is the Prison
3 Rape Elimination Act policy or operational
4 procedure, what to deal with.

5 MR. SEXTON: Thank you.

6 MR. MCFARLAND: Ms. Hardy testified
7 yesterday that just within a matter of days or a
8 week or so the implementation manual was
9 distributed.

10 MS. HARDY: I got it signed. I am working
11 on the final distribution.

12 MR. MCFARLAND: Officer Lewis, what is
13 your understanding of the Operational Procedure 136
14 revised April 2005? Is that particular to
15 CSP-Sacramento?

16 MR. LEWIS: To the best of my knowledge,
17 no, it's pretty much the statewide policy. I was at
18 an IST manager's meeting just last month; they
19 brought in the sexual assault team from Tehachapi,

20 California. There is a team there that is designed
21 to deal with that, collecting all the evidence.
22 They pretty much give us an update of what was going
23 on, and it seemed to be pretty much in line with
24 where we're headed.

25 MR. MCFARLAND: If this is just peculiar

1 -- I know you said otherwise. But if this turns out
2 to be customized to CSP-Sacramento, is there a
3 written policy or operational procedure that is
4 common systemwide?

5 MR. LEWIS: Yeah. It would have to be.
6 It would have to be something that it would fall in
7 line with. You are always going to have some
8 institutions -- for example, part of our policy is
9 that we take the victim to the University
10 California, Davis.

11 MR. MCFARLAND: Medical Center?

12 MR. LEWIS: Medical Center. Where he is
13 then evaluated and treated by the sexual assault
14 nurse examiner. Other agencies obviously don't go
15 there. Everybody has a different plan and different
16 mutual aid agreement with various hospitals. Your
17 plan might vary. But, by and large, it's going to
18 be relative the same as far as sounding the alarm,
19 separating the victim, obviously not providing

20 showers, things like that trying to preserve the

21 evidence.

22 The procedures are relatively the same. It is

23 just where you take them and how you process them

24 might be different.

25 MR. MCFARLAND: Let me hand you OPM 136,

1 and because it's evidently been out at least since
2 2005 and you're the academy instructor on this and
3 other subjects, just tell me if you have had any
4 familiarity and have used this?

5 MR. LEWIS: Have I seen this direct OP?
6 The answer is, no, I have not. But this still falls
7 within the protocols of how we deal with a situation
8 of alleged rape.

9 MR. MCFARLAND: So I take it that if you
10 haven't seen it, you haven't been distributing that
11 to any of your staff?

12 MR. LEWIS: That is correct.

13 MR. MCFARLAND: If you haven't seen it, I
14 assume there wouldn't be anybody else at CSP-SAC who
15 would have been instructing and using that OPM 136?

16 MR. LEWIS: That is correct. Myself and
17 Sergeant Moore are the only two people who teach
18 this course.

19 MR. MCFARLAND: Is prisoner sexual assault

20 a problem, in your opinion, a significant problem?

21 MR. LEWIS: There is always a potential

22 for there to be a problem there. Do I believe

23 prison rapes happen? Yes. Do I think they happen

24 frequently? No. I believe -- in my experience, I

25 know of -- in 22 years of experience as a sergeant

1 and officer I know of two that I have had dealings
2 with. But it does happen.

3 I was looking through some statistics that DOJ
4 -- I am sure you guys have got this. And just from
5 looking from last year's stats in California, we
6 have 161,000 inmates incarcerated. I believe 54
7 allegations of sexual misconduct, both staff and
8 inmates.

9 MR. LEWIS: The two incidents that you are
10 aware of personally in your 22 years, did you have
11 any voluntary involvement in the investigation?

12 MR. LEWIS: No, I did not.

13 MR. MCFARLAND: Do you think that PREA and
14 the state law were necessary or was it a kind of
15 political overreaction to a problem that is not very
16 significant?

17 MR. LEWIS: I actually think it's a good
18 idea.

19 MR. MCFARLAND: Why is that?

20 MR. LEWIS: I think -- well, first of all,
21 we had for a very long time a policy that states
22 that inmates are not allowed to have consensual sex.
23 That policy, by and large, has been widely ignored.
24 There is those types of relationships going on
25 inside. What we are telling our staff now there is

1 no such thing as consensual sex. Each incident of
2 consensual sex that they observe is going to be
3 treated and dealt with and handled much like it is a
4 rape until the investigation proves otherwise.

5 MR. MCFARLAND: Is that a change from when you
6 started 22 years ago?

7 MR. LEWIS: Yeah. Twenty-two years ago we
8 would just write them up, and it would be an
9 Administrative 115 or Serious 115 rules violation
10 because they weren't technically allowed to do, but
11 it still happened.

12 MR. MCFARLAND: What is the culture like
13 in CSP-Sacramento as far as sexually-related jokes,
14 sexual epithets, name calling among staff or name
15 calling of inmates? What is the kind of the state
16 of culture?

17 MR. LEWIS: I would venture to say it's
18 nothing like it is portrayed on TV or in the movies,
19 that you see in the media. I think it's been

20 portrayed through the media as those sexual assaults
21 happen and occur on a frequent and regular basis. I
22 have seen TV shows, movies that depict that.

23 In reality does that happen? Not nearly as
24 often as depicted.

25 MR. MCFARLAND: I am not talking about

1 assaults. I am just talking about the environment,
2 the climate, the banter that goes on among
3 correctional officers the way they -- are sexual
4 jokes prevalent? Are they allowed? Do folks have
5 nicknames for particular effeminate inmates, called
6 names or is there -- what is the climate? Is it a
7 sexualized climate among correctional officers?

8 MR. LEWIS: By and large, no. By and
9 large there is always going to be isolated
10 situations or cases where that might be the case.
11 But in my experience and my handling, dealing with
12 situations, by and large officers are doing a very
13 professional job.

14 MS. ELLIS: Good morning, sir.

15 MR. LEWIS: Good morning.

16 MS. ELLIS: I would like to ask a little
17 bit about the instruction and also the procedures
18 and protocol.

19 MR. LEWIS: Okay.

20 MS. ELLIS: For instance, if an inmate
21 experiences a sexual assault, during this checklist
22 and movement to get the individual off to be
23 examined, is there anyone providing basic victim
24 assistance in terms of safety and security?

25 MR. LEWIS: Those are almost two different

1 things. Are we providing safety and security? Yes.

2 Are we consoling and trying to counsel the

3 individual? Maybe to a small degree, but basically,

4 no.

5 The officer's responsibility is to sound the

6 alarm, to isolate the situation, to separate the two

7 individuals, to get additional staff as needed, and

8 then we are going to escort them to the medical

9 treatment area where they will be processed out.

10 Transportation teams will be coordinated and an

11 investigative unit will be summoned. And at that

12 point they are transported to the hospital.

13 MS. ELLIS: Typically, how long would the

14 victim have to wait before the remainder of the

15 victim's assistance protocol will be placed into

16 effect? For instance, the validation, ventilation,

17 prediction, preparation so that that victim is

18 receiving some kind of support from a psychological

19 or emotional standpoint? When does that begin?

20 MR. LEWIS: From my understanding of the
21 policy, it is once they arrive at the hospital they
22 will be provided the victim's advocate. Somebody
23 from the women's WEAVE program, Women Escaping a
24 Violent Environment, will be offered a counselor at
25 that point in time, which will help them try to deal

1 with their assault and things that have happened.

2 MS. ELLIS: Is the victim made aware of
3 that?

4 MR. LEWIS: Yes.

5 MS. ELLIS: That they will be seeing
6 someone upon arrival at the hospital?

7 MR. LEWIS: They are supposed to be
8 notified as they are being transported out that they
9 will be seeing a sexual assault nurse. They will be
10 there for them.

11 MR. MCFARLAND: I have lots of other
12 questions, but I don't want to dominate. Do you
13 have anything you want to question?

14 MR. SEXTON: The only question I would ask
15 is a follow-up to yours. Is there a sexual
16 harassment policy in the Department of Corrections?

17 MR. LEWIS: Yes, there is.

18 MR. SEXTON: Why do you not -- I know this
19 is going to sound dumb, but I'm going to ask it

20 anyway. Why are counseling services not given

21 immediately to an inmate upon report?

22 MR. LEWIS: I would not really be

23 qualified to answer that. It would be pure

24 speculation on my part, but for somebody in

25 administration level.

1 MR. SEXTON: Is there a safety issue
2 within the prison for offenders and -- for the
3 victim and the staff in regard to movement?

4 MR. LEWIS: No. I don't perceive that
5 really being a problem. I just don't know if
6 anybody's thought of that or, if somebody decided we
7 are going to get them to the hospital.

8 MR. SEXTON: Would there be time from the
9 time it's reported to give victim services or is
10 there a safety issue?

11 MR. LEWIS: I am not qualified to answer.
12 I don't think so.

13 MR. SEXTON: Thank you.

14 MS. ELLIS: To that I would add that
15 studies show the sooner the victims receive some
16 type of assistance the more apt they are to recover.

17 MR. MCFARLAND: Officer Lewis, have you
18 ever heard of a fellow CO being disciplined for
19 making sexualized jokes at the expense of prisoners?

20 MR. LEWIS: Have I heard of it? Yes.

21 Can I say for sure that it actually happened? No.

22 MR. MCFARLAND: What, frankly, is the

23 understanding among correctional officers as to what

24 you can get away with and what you can't get away

25 with in terms of name calling and jokes of a sexual

1 nature towards prisoners or around prisoners?

2 MR. LEWIS: The policy is actually pretty

3 relatively clear as far as the rules and regulations

4 state that you are not allowed to use profanity.

5 You are not allowed to use indecent comments towards

6 inmates, parolees or even visitors of inmates or

7 parolees. And that they won't be tolerated. If you

8 look at the correctional officer matrix, there are

9 protocols to deal with somebody who has those

10 allegations made and they were substantiated.

11 MR. MCFARLAND: Are those protocols ever

12 used?

13 MR. LEWIS: I'm certainly sure they are.

14 MR. MCFARLAND: Can you think of an

15 instance where they have been?

16 MR. LEWIS: Like I said, not that I -- you

17 hear stories. You hear this happened. You hear

18 that has happened. I'll give an example. There was

19 an allegation or a story that an officer at Mule

20 Creek State Prison was suspended for a period of
21 time for just using profanity towards an inmate. Is
22 that possible? Yes. It is outlined in the matrix.
23 So, can I confirm that that happened? No. But have
24 I heard that that's happened? Yes.

25 MR. MCFARLAND: Can it be possible to get

1 a copy of the matrix?

2 MR. LEWIS: Yes, I am sure one of the
3 union representatives or administrators will be
4 happy to provide it for you.

5 MR. MCFARLAND: It's called a matrix?

6 MR. LEWIS: Yeah, disciplinary matrix.

7 MS. ELLIS: How would that behavior come
8 to the attention of supervisors or authorities if
9 someone were engaging in that kind of behavior,
10 making those kind of statements?

11 MR. LEWIS: There is a couple different
12 avenues made available to them. There is a 602
13 process where he can complain about staff misconduct
14 or he also can file a staff complaint, which is a
15 relative new process where they conduct an
16 investigation into the incident, into the behavior
17 of the employee.

18 MS. ELLIS: I wanted to find out if
19 whether or not another officer would report someone

20 that they overheard. Does that typically happen?

21 If you and I were working together and you overheard

22 me engaging in something inappropriate?

23 MR. LEWIS: If you and I were working

24 together and I heard you making some inappropriate

25 remarks to an employee or inmate, I would probably

1 say something to you first. If I was unsatisfied
2 with that, I would just probably report it to my
3 supervisor, obviously depending on the severity of
4 the issue.

5 MS. ELLIS: Do you generally find that
6 this is the norm in terms of how other officers
7 might respond?

8 MR. LEWIS: Yes.

9 MR. MCFARLAND: What would happen to a
10 prisoner typically if he filed a 602 against a
11 correctional officer?

12 MR. LEWIS: As far as retaliation?

13 MR. MCFARLAND: Yes.

14 MR. LEWIS: They file them continuously,
15 on a regular basis. It is an avenue for them. We
16 have an appeals person who simply tracks the number
17 of 602s and what the level and where they are time
18 restraint-wise. The 602 process is a widely used
19 process that many inmates utilize on a regular

20 basis. To best of my knowledge, I've never heard of
21 or seen retaliation for filing a 602.

22 MR. MCFARLAND: Have you ever heard of
23 sexual misconduct, as in staff on inmate sexual
24 assault in your 22 years? You mentioned two
25 incidents. Is that the sum total of what you've

1 heard about?

2 MR. LEWIS: Those two incidents were
3 inmate-on-inmate related. Both a number of years
4 ago. Have I heard of staff and inmate misconduct?

5 Yes, I have.

6 MR. MCFARLAND: How often?

7 MR. LEWIS: More often than I would like
8 to say actually happens. We had an incident in
9 CSP-Sacramento within the last six months where an
10 employee, noncustody employee, was involved in a
11 relationship with an inmate.

12 MR. MCFARLAND: What happened to that
13 employee?

14 MR. LEWIS: That's a good question. They
15 are no longer working. They are restricted from
16 grounds at this point in time. I would imagine the
17 investigation is still ongoing.

18 MR. MCFARLAND: You do know that they were
19 disciplined?

20 MR. LEWIS: They'e no longer at work.

21 MR. MCFARLAND: Most everybody knows that?

22 MR. LEWIS: Most people know that they are

23 restricted from grounds.

24 MS. ELLIS: Do you have the ability as the

25 correction officer back when you were working there

1 as a sergeant, do you have the ability, once you
2 identified someone who appears to be vulnerable to
3 being preyed upon, do you have the ability to
4 recommend a transfer?

5 MR. LEWIS: Recommending transfer or
6 alternate housing?

7 MR. SEXTON: From whatever situation they
8 are in, do you have the ability to change their
9 living environment?

10 MR. LEWIS: Yes, most assuredly,
11 immediately. If I see somebody that I think could
12 become a victim or somebody who is weak, unable to
13 defend himself, there is alternate housing. There
14 are other means available to you. But if you read
15 -- I am sure you're well-aware of the PREA process.
16 If they feel that is adverse, they technically can't
17 be rehoused.

18 MR. SEXTON: What is the prevention
19 activity if you see someone that you feel is being

20 preyed upon or may be preyed upon?

21 MR. LEWIS: We would have the ability to
22 temporarily alter their housing, yes.

23 MR. MCFARLAND: What are the
24 characteristics of a vulnerable prisoner, a prisoner
25 vulnerable in your judgment to sexual assault?

1 MR. LEWIS: That is wide variety.
2 Obviously, somebody small in size, somebody maybe
3 with feminine characteristics, quite oftentimes
4 somebody who is a first-timer in prison. Their age
5 is going to depict upon whether they are preyed upon
6 or not. Their commitment crime is often a big
7 thing. And as inmates have other inmates arrive at
8 the institution, it is quite common for inmates to
9 approach the other inmate, want to know what the
10 commitment crime is. They want to know certain
11 things, where he is from. They are basically
12 checking him out. All those are various
13 characteristics of a potential victim.

14 MR. MCFARLAND: What relevance does the
15 commitment crime have?

16 MR. LEWIS: Anybody with a -- usually an
17 inmate with a sexual crime against a minor or what
18 we refer to often in the Department as an R suffix
19 would potentially make him a victim.

20 MR. MCFARLAND: R suffix, child molester?

21 MR. LEWIS: Child molester, a lewd and

22 lascivious act against children under the age of 18.

23 There is a whole variety of different reasons you

24 would assign an R suffix.

25 MR. MCFARLAND: Any other characteristics?

1 MR. LEWIS: Those are the most general.
2 There are a variety of them. Somebody who may be
3 unaggressive, maybe somebody who is developmentally
4 disabled often also would potentially pose to be
5 somebody who would be a victim.

6 MR. MCFARLAND: What do you do when you
7 see those characteristics? You mentioned that you
8 have the capacity to recommend that their housing
9 assignment be changed. Any others? Is there any
10 training that you give to other correctional
11 officers about what, if anything, they should do,
12 how often they should recommend a housing? Is it
13 none of their business?

14 MR. LEWIS: By and large, what we ask
15 officers to do is look for things like that. We ask
16 the officers to look for somebody who may look like
17 he's been involved in some type of physical
18 altercation. Be aware of who they are housing
19 individuals with.

20 As long as you continue to house people in a
21 cell, there's always going to be a potential for
22 violence there. If they deem that there has been an
23 incident or they believe there's been an incident,
24 pull the guy out, bring him down to the watch
25 office. We'll sit down and talk to him. Some

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1 inmates may report that; some inmates may not. To
2 an inmate, if he reports it, he may seem like he is
3 weak, he can't walk that line anymore. There are a
4 variety of protocols to be taken.

5 If he expresses concern about his safety or
6 about his housing, then we are going to act upon it
7 because we are obligated to.

8 MR. MCFARLAND: Would you mind kind of
9 walking us through what you teach as being the
10 appropriate protocol or procedure for a correctional
11 officer who has just heard a rumor or another inmate
12 says or the inmate, the alleged victim, comes to the
13 correctional officer or another correctional officer
14 passes on a rumor or observation, what is the
15 correctional officer supposed to do from what you've
16 instructed him to do?

17 MR. LEWIS: We would like them to and
18 expect them to immediately remove the inmate from
19 that immediately, escort him to the watch office,

20 facility office. At that point in time, we will
21 interview them. Based on what he says, based on
22 what the officer is passing on, if he heard another
23 inmate talking about it, we are going to expect them
24 to document that. If another correctional officer's
25 observation, we are going to get ahold of that

1 correctional officer and get a written report on
2 that.

3 Based on that, we will probably place him in
4 some type of segregated unit pending a review and
5 investigation into the incident and let the
6 committee, administration, sit down and look at the
7 facts. Completion's probably been referred to
8 Officer Viles' unit, as far as investigation goes.

9 MR. MCFARLAND: That is the Investigation

10 --

11 MR. LEWIS: Services Unit.

12 MR. MCFARLAND: -- Services Unit.

13 MR. LEWIS: They would probably come down,
14 take a detailed statement from everybody and then
15 they would make their recommendation to the
16 administration and possible transfer to another
17 institution. There would be maybe putting them on
18 another yard, putting them possibly on a sensitive
19 needs yard, often referred to as S&Y yard, where

20 other potential victims may have gone, again
21 drop-off housing, where he can go and get to do his
22 time.

23 MR. MCFARLAND: Maybe I missed it. Where
24 in the process is a medical officer supposed to be
25 alerted?

1 MR. LEWIS: The medical officer would be
2 alerted if there was reason to believe that a sexual
3 assault had occurred and it had occurred recently.
4 If that was the case, we would then continue the
5 process and they would actually transfer to U.C.
6 Davis for any type of evidence collection. If it's
7 been -- the inmate reports I was raped, but I was
8 raped a month and a half ago, obviously there is not
9 going to be a reason to collect evidence.

10 MR. MCFARLAND: If a rumor has come to you
11 that an individual has been raped recently, where in
12 the process should the medical unit be called?

13 MR. LEWIS: Within hours of being removed
14 from that environment.

15 MR. MCFARLAND: What committee that you
16 mentioned reviews some of the statements?

17 MR. LEWIS: You have different types of
18 committees at the institutional level, but I would
19 imagine once an inmate is placed in alternate

20 housing, such as a segregated unit, he has to be
21 seen by institutional classification committee
22 within days of being placed there.

23 MR. SEXTON: Mr. Chairman, may I follow up
24 on one question?

25 MR. MCFARLAND: Yes.

1 MR. SEXTON: Do you instruct all your
2 classes from a written lesson plan?

3 MR. LEWIS: We actually teach off that
4 PowerPoint that I provided you.

5 MR. SEXTON: You mentioned that if an
6 inmate says he was raped a month and half ago, you
7 wouldn't follow up with investigation. Why not?

8 MR. LEWIS: I didn't say we wouldn't
9 follow up with an investigation. We would not
10 follow for collection of evidence.

11 MR. SEXTON: Why not?

12 MR. LEWIS: Because, according to most of
13 the things that I have read, the evidence would have
14 been lost by that period of time.

15 MR. SEXTON: Would you go check the scene
16 where it allegedly happened? There would be no
17 evidence collection attempt at all?

18 MR. LEWIS: That would be up to the
19 Investigative Services Unit.

20 MR. MCFARLAND: How much -- what is your
21 understanding of how much time would make a medical
22 exam irrelevant?

23 MR. LEWIS: I am not qualified to answer
24 that. But if you want my personal opinion, I would
25 say anything more three or four days.

1 MR. MCFARLAND: I want your opinion as to
2 what you would instruct COs to do.

3 MR. LEWIS: If the officer -- I would
4 leave that to the discretion of the medical staff.
5 I would tell the officer their protocol is to still
6 bring them down to the facility, notify the
7 supervisor, have the supervisor start the process
8 and then go from there. If it is deemed that
9 collection of evidence is not going to be able to be
10 obtained because it has been a period of time, that
11 is going to be somebody beyond the officer.

12 MR. SEXTON: Who makes that determination?
13 Is that a line officer making that determination?
14 Or do you secure the scene and allow an investigator
15 to go in?

16 MR. LEWIS: The officer is not going to
17 make that decision.

18 MR. SEXTON: I'm going back to your
19 month-and-a-half reference that they wouldn't be

20 able to process a scene. Would you not secure that
21 scene and let the investigator make that
22 determination?

23 MR. LEWIS: To be honest, I don't know
24 what the protocol would be. I imagine they would
25 probably not.

1 MR. MCFARLAND: Do you know how long a
2 rectal tear could be determined by medical?

3 MR. LEWIS: No, I do not.

4 MR. MCFARLAND: There is nothing in any of
5 the training that you have that you pass on to other
6 COs about sexual assaults that gives you those
7 answers?

8 MR. LEWIS: No.

9 MR. SEXTON: You've never been a part of
10 actually walking through this procedure in an actual
11 sexual assault?

12 MR. LEWIS: No, I have not.

13 MR. MCFARLAND: What allegations of sexual
14 misconduct by a staff person, not just a joke, a
15 sexually related epithet towards a prisoner, but if
16 you became aware that another line officer was
17 having sexual contact with an inmate, how should you
18 respond?

19 MR. LEWIS: To immediately notify your

20 supervisor of the situation and be prepared to
21 document that, either in a report or a memorandum.

22 MR. MCFARLAND: Would't that have adverse
23 consequences for your reputation among your fellow
24 officers?

25 MR. LEWIS: No.

1 MR. MCFARLAND: Is there no code of
2 silence among officers to kind of look the other way
3 or not be squealing on their --

4 MR. LEWIS: No, when it comes to
5 committing felonies, which is essentially what is
6 happening. Is there perception that there is a code
7 of silence? Yes. I can assure you that when it
8 comes to committing felonies, bringing in drugs,
9 things like that, officers are going to step forward
10 and do as required.

11 MR. MCFARLAND: One of our witnesses
12 yesterday talked about the paycheck protection plan
13 that CDCR has. What does that mean to you?

14 MR. LEWIS: I have no idea what they were
15 even referencing.

16 MS. ELLIS: I have a --

17 MR. MCFARLAND: Can I add a follow-up. Do
18 you think there would be any repercussions for you
19 if you did not report? My earlier question, what

20 would happen if you did report. Would there be any
21 repercussions if you didn't report and was later
22 found that a fellow officer had committed sexual
23 misconduct with a prisoner?

24 MR. LEWIS: Could I be held accountable?

25 MR. MCFARLAND: Yes.

1 MR. LEWIS: Absolutely.

2 MR. MCFARLAND: How so?

3 MR. LEWIS: If you have knowledge of an
4 incident and it is a felony and you don't report it
5 or you failed to report it, that makes you a
6 co-principal in the crime.

7 MR. MCFARLAND: Have you ever heard of any
8 officer being disciplined, punished or even
9 prosecuted for failure to report?

10 MR. LEWIS: No, I have not, not to the
11 best of my knowledge.

12 MR. MCFARLAND: In the 22 years it is
13 either not happening or not being enforced?

14 MR. LEWIS: I have no knowledge of it.

15 MS. ELLIS: I would like to ask a question
16 about victim's rights as listed on the PowerPoint,
17 the rights regarding confidentiality, medical
18 treatment, rehousing, and the right not to become a
19 victim again.

20 Under that particular line is listed a victim
21 support person. And based on the victim support
22 person definition, I am wondering who else might
23 that include? That the victim support person which
24 is afforded according to the rights that a victim
25 may have, does any person of the alleged victim's

1 choosing, which could include another offender,
2 personal friend or family member, who else beyond
3 those listed?

4 MR. LEWIS: It's right out of the policy.
5 The policy states that the victim has the right to a
6 support person of his choosing. It could be another
7 inmate. It could be a parolee.

8 MS. ELLIS: Do you have any idea about any
9 any other people that might be available that the
10 victim might decide to choose?

11 MR. LEWIS: Yeah. He has the chaplain.
12 He could have another officer if he felt comfortable
13 doing that. He would have a counselor. He could
14 contact somebody -- basically, what we are obligated
15 to provide, somebody that he is requesting to have
16 come, comfort him and help him through the time.

17 MS. ELLIS: In your experience, who have
18 victims selected to be the support person?

19 MR. LEWIS: To be honest with you, I have

20 no idea. I have not seen or heard of an incident.

21 I know there was an incident recently. I don't know

22 who the inmate chose.

23 Does that raise concerns? Certainly, it does.

24 What if I want to make an escape attempt, and so I

25 want to allege that I was sexually assaulted by my

1 cellie. I know I will get transported to the
2 hospital. I want Jones over in PSU or over in the
3 ad seg unit, I want him to become my support person
4 because we were cellies a long time and we go back a
5 long ways.

6 So all of a sudden we are transporting
7 somebody else to an outside hospital to be this
8 person's support person. That could, in fact,
9 compromise and jeopardize the security of the
10 institution. According to the law and policy, it
11 has to be offered to him.

12 MS. ELLIS: But I understood that the
13 victim does not receive that support until they
14 reach the hospital, that they wouldn't necessarily
15 have an advocate or support person travel along with
16 them.

17 MR. LEWIS: What I meant to say and maybe
18 I didn't state it properly was that we as a
19 Department aren't going to provide him an employee

20 of ours to help him through unless he requests it.
21 If he says, "I want Officer Smith; he was my housing
22 unit officer for five years, I want him to be going
23 to the hospital with me," we will make every attempt
24 to make that happen.

25 MS. ELLIS: I didn't understand that

1 originally.

2 MR. LEWIS: What I meant to say, that he
3 will be provided somebody from -- another counselor
4 who is trained in that from the hospital.

5 MS. ELLIS: So victim services could begin
6 immediately?

7 MR. LEWIS: Yeah.

8 MS. ELLIS: Upon travel to the hospital?

9 MR. LEWIS: Correct.

10 MR. SEXTON: Can I follow up with a
11 question?

12 MR. LEWIS: Go ahead.

13 THE COURT REPORTER: I didn't hear you.

14 MR. SEXTON: Employee Conduct -- I am
15 reading from Employee Conduct, Title XV. It says,
16 "Employee shall be alert, courteous and professional
17 in their dealings with inmate, parolee, fellow
18 employees, visitors and members of the public."

19 Why is alert listed first?

20 MR. LEWIS: Because they can't be engaged
21 in any other activities that may take them away from
22 being able to be aware of their surroundings.

23 MR. SEXTON: Why?

24 MR. LEWIS: Because you, by and large, are
25 being charged with the custody of these inmates; if

1 you are not aware of what is going on around you,

2 you may, in fact, have victims.

3 MR. SEXTON: What kind of environment are

4 you working in?

5 MR. LEWIS: You are working in a Level 4

6 maximum security prison.

7 MR. SEXTON: Thank you.

8 MR. MCFARLAND. Do you have any

9 representatives from the district attorney in your

10 facility?

11 MR. LEWIS: Yes. I believe Officer Viles

12 would be more qualified to answer that, but I

13 believe there are DAs upstairs in the facility.

14 MR. MCFARLAND: What is your understanding

15 of when they should be informed -- protocol

16 described to them?

17 MR. LEWIS: As soon as investigations

18 deems necessary to contact them.

19 MR. MCFARLAND: So once you contact

20 investigations, it is out of your bailiwick?

21 MR. LEWIS: Correct.

22 MR. MCFARLAND: When you teach others, you

23 tell the COs you don't make a judgment as to when

24 the DA gets involved?

25 MR. LEWIS: Correct. Keep in mind I am

1 teaching primarily the officers, the front-line
2 people that come across this. I tell them what
3 their responsibility is. If you come across
4 anything that you perceive to be, you need to be
5 proactive in that approach and you need to get that
6 person out, need to get them down to your supervisor
7 and into the medical and start that process.

8 Then we turn that over. As far as officers
9 are concerned, they started a time log and they are
10 going to generate the report. Once they turn that
11 over, it is going to become out of their hands,
12 relatively speaking, as to what protocols are
13 involved.

14 MR. MCFARLAND: What do you tell your COs
15 they should do to secure evidence in the event of an
16 alleged sexual assault?

17 MR. LEWIS: They are to remove both
18 occupants from the cell. They are to keep them
19 separated. They will be placed in holding cells

20 separate from one another. The victim will be seen
21 first. The aggressor will be seen second. The cell
22 will be sealed and investigative unit will come and
23 process that evidence in that potential crime scene.

24 MR. MCFARLAND: What about clothes?

25 MR. LEWIS: That is an issue that has come

1 up. We had an inmate that was taken to U.C. Davis.
2 Part of our protocol stated that we were to provide
3 or perform an unclothed body search on them. They
4 did so. They bagged his clothes per the policy,
5 which was put in a paper bag, and in taking the
6 evidence with them to the hospital. When they
7 received and reached the hospital, the sexual
8 assault nurse examiner refused to accept the
9 property. They said they couldn't prove that those
10 clothes actually had been on the victim. And so
11 that policy has been changed. And as far as I
12 understand, now we are transporting the individual
13 to the hospital in the clothing that they had on.

14 MR. MCFARLAND: When you take these
15 witness statements, the statement of an accuser and
16 the accused, do you share one another's statement
17 with the other?

18 MR. LEWIS: No. I mean, do I or does one
19 of the officers?

20 MR. MCFARLAND: In your understanding of
21 the procedure, appropriate procedure, should those
22 statements be shared with one another?

23 MR. LEWIS: No, kept confidential.

24 MR. SEXTON: The policy you just talked
25 about in regard to changing out an inmate, is that

1 contradictory with your -- if you were just
2 transporting someone who had an illness or was going
3 for a kidney dialysis or whatever?

4 MR. LEWIS: Absolutely.

5 MR. SEXTON: Why?

6 MR. LEWIS: Safety and security of the
7 institution requires that before the inmate is taken
8 outside the institution that an unclothed body
9 search shall be performed and he will then be
10 dressed in the appropriate attire to go outside the
11 institution and following which he will be applied
12 the proper mechanical restraints.

13 MR. SEXTON: Does that create any kind of
14 risk to the general public that may be in the
15 hospital?

16 MR. LEWIS: It could. Each situation
17 would be on a case-by-case basis. It could be.

18 MR. SEXTON: Do inmates ever use deceptive
19 practices to perhaps be transported?

20 MR. LEWIS: All the time.

21 MR. SEXTON: Would there not be a --

22 correctional officers are considered peace officers

23 in California?

24 MR. LEWIS: That is correct.

25 MR. SEXTON: My question: Why can you not

1 start the chain of custody yourself?

2 MR. LEWIS: I believe that is potentially
3 something they are looking into. I do know that --
4 I spoke earlier about Tehachapi's sexual assault
5 team or sexual response team, I believe called SART.
6 They do. They respond and they process that
7 clothing right there, and they will send that
8 further on to the DA. And then they'll transport
9 the inmate once that's been. We haven't been given
10 the okay to do that yet. I believe that they are a
11 trial basis or a pilot program.

12 MR. SEXTON: Thank you.

13 MR. MCFARLAND: You may have already
14 answered this. Is the protocol to conduct an
15 unclothed body search of an alleged sexual assault
16 victim or not?

17 MR. LEWIS: Right now it started that that
18 is what they are going to do. I believe, to the
19 best of my knowledge, we are no longer doing that.

20 We are transporting in the manner in which he is

21 upon removal from the cell.

22 MR. MCFARLAND: What about the unions

23 involved in the process, is a union representative

24 appointed to be the accused?

25 MR. LEWIS: In regard to if it is a --

1 MR. MCFARLAND: If it is staff.

2 MR. LEWIS: -- staff? Are they appointed?

3 I would say no.

4 MR. MCFARLAND: Do they have the right to

5 ask for one?

6 MR. LEWIS: Certainly, they do.

7 Certainly, they do. But I don't know what the

8 protocols are as far as does the union have a right

9 to refuse to represent them or not, especially in

10 regards to a potential felony. I just know they

11 would be afforded an opportunity to have a union

12 representative present.

13 MR. MCFARLAND: Do you know whether the

14 same union representative would be used for both the

15 accused and witnesses to the assault?

16 MR. LEWIS: I don't know. I don't know

17 what the union protocols are.

18 MR. SEXTON: Is California a Police

19 Officers' Bill of Rights state?

20 MR. LEWIS: Yes, Police Officers' Bill of

21 Rights.

22 MR. SEXTON: You do have a Police

23 Officers' Bill of Rights?

24 MR. LEWIS: Yes.

25 MR. MCFARLAND: Does that mean that they

1 have a right to a union representative?

2 MR. SEXTON: They have -- a Police
3 Officers' Bill of Rights gives them specific actions
4 that they have a right to take in the event of a
5 complaint by the citizens or allegation of
6 wrongdoing is made against them. There is only a
7 specific number of states that have that.

8 MR. MCFARLAND: Do you have familiarity
9 with the protocol for when a prisoner wants to talk
10 to a mental health counselor? How does a prisoner
11 do that?

12 MR. LEWIS: There is a variety of
13 different ways. If an inmate claims or asks the
14 officer verbally, the officer will provide him
15 either an inmate request to be medically examined
16 and/or if they have a counselor that is readily
17 available, they can be contacted and the inmate can
18 then be brought down to medical for evaluation.

19 MR. MCFARLAND: So what form is necessary

20 for the prisoner to use to see a mental health

21 counselor?

22 MR. LEWIS: Inmate ducat requiring medical

23 attention. I don't know the particular form number.

24 They're called ducat is what it is called.

25 MR. MCFARLAND: Do you know if a prisoner

1 who potentially has been sexually assaulted but
2 hasn't told the correctional officer, would that
3 prisoner have an opportunity to confide in a mental
4 health counselor in private or does the individual
5 have to stay in his cell and the mental health
6 counselor comes to him in the cell?

7 MR. LEWIS: Most often it would be
8 conducted and removed from the cell and brought down
9 to medical area where he would receive one-on-one.

10 MR. MCFARLAND: Would that be in the same
11 facility, that one-on-one, would that be in the
12 medical clinic?

13 MR. LEWIS: More than likely.

14 MR. MCFARLAND: Would that be in a place
15 where there would be other persons present?

16 MR. LEWIS: Not usually because most
17 medical evaluation and treatment is a confidential
18 matter. Usually it is one-on-one situation.

19 MR. MCFARLAND: Are there -- that it is at

20 CPS-SAC where a separate, confidential office where
21 a prisoner would be taken customarily if he wanted
22 to tell a mental health counselor that he had been
23 raped?

24 MR. LEWIS: I am assuming so. I know that
25 as we run inmates through the treatment and triage

1 area after any type of an incident, they go back
2 one-on-one with -- I mean, staff are there present
3 as security, but they meet one-on-one with the
4 registered nurse, whoever that is.

5 MR. MCFARLAND: The prisoner would be in
6 earshot of a correctional officer?

7 MR. LEWIS: Correct. For security.

8 MR. MCFARLAND: There isn't a room with
9 glass where the correctional officer could be
10 viewed, but not hear the conversation?

11 MR. LEWIS: We do have treatment rooms or
12 areas that could, in fact, happen if that is where
13 they deemed where they want to interview the
14 inmate.

15 MR. MCFARLAND: What should the procedure
16 --

17 MR. LEWIS: I am not familiar with that
18 protocol.

19 MS. ELLIS: With the training, how long

20 does this training last? Did you mention that?

21 MR. LEWIS: We teach it in four-hour

22 blocks.

23 MS. ELLIS: Four-block?

24 MR. LEWIS: Yes.

25 MS. ELLIS: Interactive?

1 MR. LEWIS: Very much so. We talk about a
2 lot of different things. We talk about past
3 practices versus what policies are now. We have
4 some recent excerpts from this, some statistics that
5 is familiar so they can kind of understand where we
6 are going, what their responsibilities are and how
7 the roles are changing.

8 MS. ELLIS: Do you generally get a good
9 discussion regarding ethical dilemmas, things of
10 that nature?

11 MR. LEWIS: Like I said, the ethical part
12 really isn't an issue. When the officers -- when
13 all is said and done, the officers are usually very
14 receptive to the training and are grateful they have
15 been at least updated in what the policies are so
16 now that they are held accountable they can't say no
17 one ever told me.

18 MR. MCFARLAND: And is there any test of
19 your students, of your COs?

20 MR. LEWIS: No, we don't have a written

21 form or test.

22 MS. ELLIS: Where would I find information

23 to help me understand the qualifications for

24 becoming a staff person in corrections?

25 MR. LEWIS: To be a correctional officer?

1 MS. ELLIS: Yes.

2 MR. LEWIS: You can find a lot of this,
3 find it on line, CDCR.com. There are recruitment
4 posters everywhere, and each institution in the
5 personnel office has correctional officers'
6 applications.

7 MR. MCFARLAND: Thank you very much,
8 Officer. Did I get your rank?

9 MR. LEWIS: Yes, I am a sergeant,
10 Correctional Sgt. Wes Lewis. But I don't mind being
11 called an officer. I have been called a lot worse.

12 I'm sorry.

13 MR. SEXTON: That is fine. Don't
14 apologize.

15 MR. MCFARLAND: Ms. Viles, what is your
16 rank?

17 MS. VILES: Correctional officer.

18 MR. MCFARLAND: Officer Viles, thank you
19 for coming and thank you for your testimony. And I

20 understand we just received this morning a revised

21 version.

22 MS. VILES: Yes.

23 MR. MCFARLAND: The floor is yours.

24 MS. VILES: Good morning.

25 MR. MCFARLAND: Good morning.

1 MS. VILES: My name is Tami Viles. Thank
2 you for allowing me to provide testimony on the
3 subject of sexual violence in the California
4 Department of Corrections and Rehabilitation system.

5 I have been a correctional officer at
6 California State Prison Sacramento for seven and a
7 half years of which I was a facility housing officer
8 for three. Currently I am assigned to the
9 Investigative Service Unit along with being the
10 institutional evidence officer. My following
11 opinions will be based on my experience with these
12 two jobs.

13 What factors and environment are and are not
14 conducive to deterrence of sexual assault in prison?

15 The factors and environments conducive to
16 deterrence of sexual assault are as follows:
17 Thorough screening of inmates for housing
18 assignments; correctional officers and medical staff
19 interaction with inmates on their routine rounds of

20 in-housing units; training for all staff to identify
21 potential victims; institutional operating policy,
22 OP 136, that keeps all victims confidential; medical
23 call slips that are available to all inmates;
24 institutional programs that allow inmates to have
25 contact with a supervisor or mentor to report the

1 victimization to; professionalism of staff in
2 handling the victim's complaints; strict
3 accountability for the aggressor.

4 The factors and environments not conducive to
5 the deterrence of sexual assault are as follows:
6 Cuts in staffing; overcrowding; retaliation by the
7 aggressor; blind spots and poor lighting in housing
8 units as well as job assignments; allowing
9 effeminate male inmates to double cell; allowing
10 Level 4 inmates to work in dining hall.

11 MR. MCFARLAND: Officer Viles, would you
12 mind scooting toward the microphone.

13 MS. VILES: Sure.

14 Which system protocols and policies requires
15 examination?

16 Protocols and policies that require
17 examination: housing and classification; work
18 assignments. Medical staff should be trained to
19 perform rape exams at the institution, eliminating

20 transports to outside hospitals. This would reduce
21 escape risks and loss of evidence. The OP 136,
22 institutional sexual policy; educate inmates on the
23 many avenues available to them for reporting rape.

24 Which staff positions in such a system would
25 be key witness?

1 The staff positions that would be key
2 witnesses would be the following: Correctional
3 officers that have contact with inmates on a daily
4 basis; correctional counselors who are available to
5 inmates in their housing units; staff, medical staff
6 on call to inmate's emergency needs 24 hours a day;
7 mental health staff are available to inmates.

8 How to scrutinize the training of correctional
9 officers and medical staff?

10 We currently have extensive training on sexual
11 assaults and PREA in our yearly in-service training.
12 The in-service training emphasizes the importance of
13 zero tolerance for sexual misconduct in its
14 institutions; the training teaches correctional
15 officers and other staff members the legal
16 authority, policy, identifying the behavior
17 prevention as staff responsibilities. This along
18 with OP 136 sexual assaults procedure and check-off
19 list of things to do if an assault occurs ensures

20 that the victim gets the care and treatment they

21 need.

22 CDCR track sexual assaults through incident

23 reports. The information from this tracking method

24 can be used to focus on institutions that might need

25 additional training for medical and/or correctional

1 officers. The sexual assault team should have more
2 intensive training in investigative procedures,
3 evidence of collection, exam procedure for medical
4 staff and counseling. Because I have attended the
5 U.C. Medical SART training and felt it was
6 excellent, all medical staff and investigative staff
7 would benefit from sexual assault forensic examiner
8 training provided through U.C. Medical Center.

9 The sexual assault forensic examiner training
10 includes: basic legal issues, sexual assault
11 history, psychodynamics of rape, anatomy review,
12 exam and evidence collection, skills stations,
13 genital trauma, special problems and challenges,
14 treatment and follow-up, assessment, and effective
15 expert testimony.

16 What are the likely barriers to reporting,
17 accurately investigating and deterring prison rape?

18 Barriers to reporting prison rape: fear of
19 future violence, believability, he said-he said,

20 embarrassment.

21 Barriers to accurately investigate rape:

22 limited time due to staff workload, delayed

23 recording from victims, inmate's believability,

24 inmate's distrust in the prison system,

25 investigative training.

1 Barriers to deter prison rape: funding,
2 staffing, overcrowding, lack of video cameras for
3 monitoring and prevention.

4 This concludes my testimony.

5 Does the panel have any questions? And thank
6 you for the opportunity for providing testimony.

7 MR. MCFARLAND: As the institution's
8 evidence officer, what are your responsibilities?

9 MS. VILES: My responsibilities are to
10 collect evidence that has been secured in an
11 evidence locker. Each facility has a locker
12 provided in a controlled area with an officer,
13 manned 24 hours a day. They lock it up in the
14 locker. I go and I pick it up, lock it and
15 catalogue in a logbook and put it in the
16 institution's evidence room where it stays till
17 requested.

18 MR. MCFARLAND: What related to sexual
19 assault might be that locker?

20 MS. VILES: If a crime was committed and
21 there was clothing removed or any evidence that was
22 processed from the scene. These are the types of
23 things that would have been in the locker. Most
24 clothing that is on inmates would be removed from
25 the scene by the examiner in the hospital. But

1 there is an avenue to preserve, secure and log the
2 evidence at the institution.

3 MR. MCFARLAND: How many evidence officers
4 are there in CSP-SAC?

5 MS. VILES: One.

6 MR. LEWIS: You are it.

7 MS. VILES: Yes.

8 MR. MCFARLAND: Are there multiple
9 investigative service units?

10 MS. VILES: We have one service unit with
11 approximately 12 members on a team who are available
12 for investigating all types of crimes and rape as
13 one of them.

14 MR. MCFARLAND: Would that include medical
15 officers?

16 MS. VILES: Not in the Investigative
17 Service Unit. Medical staff are separate.
18 Additionally, we have two District Attorney
19 investigators in the unit as well.

20 MR. MCFARLAND: Is that typical for the 33

21 institutions or is this something for CSP-SAC?

22 MS. VILES: I'm sorry, I have no knowledge

23 of the other institutions.

24 MR. MCFARLAND: When do the DAs get

25 involved in an alleged sexual assault?

1 MS. VILES: If on grounds, they could be
2 involved from the very beginning.

3 MR. MCFARLAND: What is your understanding
4 when they should be involved?

5 MS. VILES: They should be involved if
6 Miranda Rights need to be issued. That is one of
7 their duties they perform. If an officer feels a
8 crime has been committed, at that point.

9 MR. MCFARLAND: Is your understanding of
10 the protocol for sexual assault investigation
11 limited to what you would have learned from Sgt.
12 Lewis in his in-service training on that subject?

13 MS. VILES: I might have a little more
14 knowledge of the sexual assault because I have read
15 OP 136. All officers do have all the operating
16 procedures available to them. However, their
17 responsibility on a daily basis is very different
18 than mine. They are focusing more on the housing
19 and needs of inmates routinely on a daily basis.

20 MR. MCFARLAND: You're a line officer

21 currently, correct? Front-line officer?

22 MS. VILES: I am a front-line officer if

23 an emergency arises. However, my main duties

24 involve collecting evidence, processing evidence.

25 MR. SEXTON: How often does that happen?

1 MS. VILES: Incidents? Daily.

2 MR. SEXTON: You are talking about any
3 incident?

4 MS. VILES: Any incident. Stabbing,
5 mutual combat, staff assault, gassing.

6 MR. SEXTON: When a stabbing occurs, who
7 investigates that?

8 MS. VILES: IS Unit, Investigative Service
9 Unit investigates that as well. The 12 members of
10 ISU Unit I mentioned are responsible for
11 investigating all crimes.

12 MR. SEXTON: Why would the DA not
13 investigate that?

14 MS. VILES: They are involved in Miranda
15 Rights and are available upon request for any
16 investigation.

17 MR. SEXTON: A sexual assault, the DA has
18 to get involved?

19 MS. VILES: If after investigating through

20 the ISU Unit, if a crime has been proven, then it is
21 referred to the DA for further investigating.

22 MR. SEXTON: A peace officer actually does
23 the investigation of crime in the facility?

24 MS. VILES: The initial investigation.

25 MR. SEXTON: Then they turn that over to

1 the District Attorney? They keep referring to the
2 District Attorney. Very quickly, that is what my
3 question is.

4 MS. VILES: Maybe I didn't make myself
5 clear. The District Attorney investigative
6 employees on grounds do assist in investigating the
7 crime. If there is a crime, then it's turned over
8 to the District Attorney to prosecute.

9 MR. SEXTON: Would they investigate the
10 same stabbing you referred to?

11 MS. VILES: They could.

12 MR. MCFARLAND: Is there any written
13 policy or protocol or procedure that would specify
14 when the DA is to be notified and get involved in an
15 alleged sexual assault?

16 MS. VILES: Once a crime has -- there is
17 evidence that there has been a crime committed, then
18 it could be referred to the District Attorney. That
19 would be after the initial institution

20 investigation.

21 MR. MCFARLAND: Your understanding is

22 based on what?

23 MS. VILES: Protocol.

24 MR. MCFARLAND: What protocol is OP 136

25 or --

1 MS. VILES: Excuse me for one moment.

2 MR. MCFARLAND: Take your time. My
3 understanding is that it is.

4 MS. VILES: My understanding is that it is
5 after there is evidence sustaining a rape that it is
6 turned over to the District Attorney.

7 MR. MCFARLAND: After evidence?

8 MS. VILES: Sustaining a rape, that there
9 has been a rape.

10 MR. MCFARLAND: That would be determined
11 by the ISU?

12 MS. VILES: Yes.

13 MS. ELLIS: Officer Viles, my question has
14 to do with the investigation itself. To your
15 knowledge, how soon or perhaps we could even talk
16 about it typically, does the investigating officer
17 meet with the victim?

18 MS. VILES: Personally, I have not been
19 involved in any investigation of a rape. I have

20 knowledge of one incident that has occurred in the
21 last year. However, the investigative officer, if
22 on grounds, could be seeing the victim immediately.
23 The first course of action is to get the inmate to
24 medical staff and make sure that his needs are met
25 and treatment, that he be --

1 MR. SEXTON: What hours do the
2 investigators work here?

3 MS. VILES: Typically, our hours are six
4 to three, and we are all on call 24 hours a day,
5 however.

6 MR. SEXTON: Most rapes occur on a second
7 or third shift. So it may take a little time for
8 them to see this investigator?

9 MS. VILES: Correct.

10 MR. SEXTON: Call one in. How long have
11 you been the evidence officer for the Investigative
12 Service Unit?

13 MS. VILES: Two months.

14 MR. MCFARLAND: Who heads the ISU?

15 MS. VILES: The ISU has two lieutenants
16 overseen by the Associate Warden.

17 MR. MCFARLAND: But the medical staff are
18 not ISU?

19 MS. VILES: No, they are not.

20 MR. MCFARLAND: If I understand, the DA is
21 only called if the ISU decides there has been a
22 crime committed, but the ISU is working without the
23 benefit of a medical examiner; is that correct?

24 MS. VILES: We have medical staff on
25 grounds and the inmate is afforded immediate medical

1 attention. Any recommendation from medical staff
2 would be reported through a report given to the ISU
3 lieutenant, and that is compiled with all the other
4 evidence which would be turned over to the District
5 Attorney if a crime had been committed.

6 MR. MCFARLAND: The prisoner would need to
7 ask to see a doctor?

8 MS. VILES: No. A prisoner is immediately
9 afforded medical treatment at the time of report
10 before even being transported to the U.C. Medical
11 Center. Medical staff are on staff 24 hours.

12 MS. ELLIS: Officer Viles, you indicated
13 that you attended SART training and listed the
14 courses. To your knowledge, do the investigators
15 also receive this SART training?

16 MS. VILES: To my knowledge, we are. All
17 the team members are going to be receiving training.
18 This has been discussed in the last couple of
19 meetings that we have had, so, yes.

20 MS. ELLIS: You have been the only one to

21 date?

22 MS. VILES: To date.

23 MS. ELLIS: To attend SART training?

24 MS. VILES: Correct.

25 MR. MCFARLAND: What is your understanding

1 of procedures if the allegation of sexual assault is
2 directed at an officer?

3 MS. VILES: If it is a staff complaint,
4 the Office of Internal Affairs are immediately
5 notified, and they handle the investigation, keeping
6 it separate from the Investigative Service Unit.

7 MR. SEXTON: Do you ever call an outside
8 experience on an investigation? Do you ever call in
9 state investigators or Sacramento sheriff, or does
10 anybody else, does anybody ever offer forensic
11 expertise or abilities, or do you have mutual aid
12 that comes here and helps you on investigations?

13 MS. VILES: As I stated before, as
14 evidence officer I have not been an investigator.
15 However, any outside agency available through the
16 District Attorney investigators off shore would be
17 used through our other investigators. But to my
18 knowledge, no, they don't come on ground.

19 MR. MCFARLAND: I am sorry, I thought you

20 were part of ISU.

21 MS. VILES: I am.

22 MR. MCFARLAND: You are not an

23 investigator?

24 MS. VILES: No. We have separate,

25 different divisions. I am on the core

1 prosecution.

2 MR. MCFARLAND: I was just confused by
3 your written testimony. Currently I am assigned to
4 Investigative Service Unit along with being the
5 institutions evidence officer. So I guess I am not
6 clear. Who are the investigators among the 12
7 members of the ISU who are the noninvestigators?

8 MS. VILES: The two members of the ISU
9 Unit which, myself, our main duty is process
10 evidence, collect, secure. One other officer, his
11 responsibilities include compiling the evidence
12 reports and referring them to the District Attorney
13 if need be. The other ten would be on the
14 investigative team.

15 MR. MCFARLAND: In your testimony you have
16 listed factors and environments conducive to
17 deterrents, and I wonder if I can ask you to
18 elaborate a little bit on some of these. For
19 example, number one, you say thorough screening of

20 inmates for housing assignments. What kind of
21 screening do you think would be helpful in this
22 report? What kind of questions should be asked and
23 of who in making housing assignments to deter sexual
24 assault?

25 MS. VILES: I have not had experience in

1 the screening process. There is a special -- the
2 watch commanders do the screening as the inmates
3 come into the institutions. However, sometimes they
4 get a busload of inmates, 40, 50, at a time. In a
5 short period of time they have to decide what
6 housing they need.

7 When I say thorough screening, I just meant
8 more time to look into the backgrounds, see if
9 potential victims.

10 MR. MCFARLAND: Do you have experience of
11 making any of those housing assignments?

12 MS. VILES: As housing officer, yes. I
13 would have inmates ask to change cellies, to see if
14 they could make separate living arrangements and
15 move with homey or more compatible cell mate.

16 MR. MCFARLAND: What makes a cell mate
17 more compatible?

18 MS. VILES: Inmates from same areas, same
19 interests, closer in age.

20 MR. SEXTON: Sexual preference ever play a

21 role there?

22 MS. VILES: If it was, it was never

23 brought forward. As an officer I assumed inmates

24 could have had other alternatives for why they

25 wanted certain cell mates, but nothing I could prove

1 or disprove.

2 MS. ELLIS: What about crime similarity?

3 MS. VILES: Yes, that could be one of the
4 common denominators to make them want to be a cell
5 mate.

6 MS. ELLIS: Following on, factors not
7 conducive.

8 MR. MCFARLAND: I am not quite done with
9 this one. Number two, you talk about COs, medical
10 staff interaction with inmates on their routine
11 rounds in housing units.

12 Would that interaction with medical staff
13 occur -- when you're talking about the rounds,
14 routine rounds, would that occur while the prisoner
15 is incarcerated within earshot of other prisoners?

16 MS. VILES: They would be in housing
17 units. Their cell doors are shut. This would be
18 MTAs on the tier passing out medications several
19 times a day. I imagine if they didn't want everyone

20 to hear, I think they could talk quietly. There is
21 a slight little bit of privacy or they can pass them
22 a medical ducat to request being seen in privacy.

23 MR. MCFARLAND: They would have to ask for
24 the ducat?

25 MS. VILES: Medical call slips are

1 available in the housing units, on the yard, the
2 watch office. Each block has a tier tender that
3 helps pass out different things with the officer.
4 If they needed something, they could alert the
5 officer they needed a call slip.

6 MR. MCFARLAND: Help me with just how it
7 would actually work. If a prisoner was raped by his
8 cellie one night, the next morning before he's gone
9 out on the yard, he is not going to have access to
10 that ducat, he is going to have to ask the trustee
11 for the form?

12 MS. VILES: No. He could alert the
13 officer that would be on the tier during count.
14 They have several counts daily, approximately five
15 to seven depending on levels and where they are at.
16 He could just let them know. You do not need a
17 ducat if you are raped. If they wanted privacy or
18 if they were wanting a way down to the doctor's
19 office, they could use a call slip method.

20 MR. SEXTON: Let's talk about privacy.

21 How much privacy is there in a prison?

22 MS. VILES: None.

23 MR. SEXTON: Thank you.

24 MR. MCFARLAND: On Item 6 you say

25 institutional programs allow inmates to have contact

1 with a supervisor or mentor. Who is the mentor? Is
2 this an outside volunteer?

3 MS. VILES: They do have volunteers come
4 in with different programs. AA. They have music
5 instructors come in. Men groups, chaplains.

6 MR. MCFARLAND: Your point is that that
7 would be another occasion when they could
8 potentially get the word to them they have been
9 assaulted?

10 MS. VILES: Correct.

11 MR. MCFARLAND: By institutional programs,
12 supervisors, you are talking about GED classes and
13 so forth?

14 MS. VILES: Yes. Or their workplace
15 supervisor as well.

16 MR. SEXTON: Mr. Chairman, I would like to
17 ask Mr. Lewis a quick question. Is PREA putting, in
18 your opinion, and you have been a line officer and
19 training instructor, is PREA putting the basic

20 functions of the institution in conflict? My
21 question would be privacy. For example, there is
22 mention of privacy. There is no privacy in prisons.
23 Prisons are built for observation.

24 In your experience are we putting -- is PREA
25 putting some strains in regards to implementing

1 privacy into a prison?

2 MR. LEWIS: I don't see it that way. You
3 know, if I could just piggyback on one of the
4 questions that Officer Viles was asked. That is
5 regarding medical slips and ducats. If he doesn't
6 have one available. Most inmates stockpile a
7 variety of forms in their cells, number one.

8 Number two, he can write it on a piece of
9 paper, I need out of the cell. I need intervention.
10 I need this. He writes it on a piece of paper and
11 slides it out the cell. He is not announcing to the
12 tier he's been raped.

13 Officers would act upon that immediately.
14 They are not going to sit him down and then call out
15 or say, "Well, we'll get to you in two or three
16 days." There are areas of prisons that are designed
17 for interviews, interview area, where they can have
18 one-on-one. Do we commonly trust them for routine
19 medical appointments? No. But are they available,

20 if necessary? Yes, they are. But is privacy a big

21 issue? There is not that lot of it.

22 But the PREA program isn't putting any real

23 constraints on us that I see. I try to stay on task

24 with the elimination of prison rape.

25 MR. MCFARLAND: Officer Viles, have you --

1 are you aware of any officer being disciplined for
2 violation of sexual misconduct in your seven and a
3 half years?

4 MS. VILES: No, I am not aware of it.

5 MS. ELLIS: Under the factors that you
6 list as nonconducive, I would like to have you
7 elaborate a little bit on number four, blind spots
8 and poor lighting as well as job assignments. Help
9 me understand that.

10 MS. VILES: Well, there are few job
11 assignments that are -- prove to have more security
12 risks than others and one mainly being the dining
13 hall. They have taken steps to improve the dining
14 hall area. However, there are back areas where they
15 wash the plates, the dishes, freezer lockers,
16 storage areas and the pantry areas which our
17 visibility is not great.

18 There is some blind spots in work centers,
19 main kitchen areas, they have some cameras, but not

20 all areas are able to be monitored.

21 MS. ELLIS: How about Number 5?

22 MS. VILES: Some of the effeminate inmates

23 can prove to be potential victims on a yard with

24 predators and aggressors. Their needs -- they might

25 address the housing need and put them in sensitive

1 need jobs.

2 MR. MCFARLAND: Are Level 4 inmates
3 allowed to work in the dining hall?

4 MS. VILES: To my knowledge, they are.

5 MR. MCFARLAND: Are you aware of, looking
6 at Item 3, retaliation by aggressor? Has there ever
7 been an instance in your knowledge where the alleged
8 aggressor has been sent to ad seg to keep him away
9 from the victim as opposed to the victim going to ad
10 seg?

11 MS. VILES: No. That would be the policy
12 if it occurred, the aggressor would be sent to ad
13 seg. I am not aware of anyone being -- aggressor
14 taken retaliation.

15 MR. MCFARLAND: Who would be the most
16 knowledgeable person in CSP-SAC on that?

17 MS. VILES: It could be the lieutenants of
18 each facility that arrange to have the inmates
19 transferred to ad seg.

20 MR. MCFARLAND: What is your understanding
21 of the usual protocol if there is an alleged sexual
22 assault, do both victim and aggressor get sent to ad
23 seg or just one?

24 MS. VILES: The aggressor gets sent to ad
25 seg and the victim is provided with alternative

1 housing needs, possibly a sister institution or
2 sensitive needs yard. In the past they might have
3 referred them to ad seg, but now they are looking at
4 the alternatives, sort of making them feel like they
5 have been victimized the second time.

6 MR. MCFARLAND: Have you seen a change in
7 the handling of sexual assaults in the course of the
8 seven and a half years of your service?

9 MS. VILES: I haven't had that much
10 experience in sexual assault. I have noticed a big
11 change in the last year of awareness of sexual
12 assault, how important it is to have zero tolerance,
13 how it will improve the safety and security of the
14 institution.

15 MR. MCFARLAND: Is there a lot of joking
16 among front-line staff of a sexual nature?

17 MS. VILES: No, I have not experienced
18 that at all.

19 MR. SEXTON: Have you been sexually

20 harassed?

21 MS. VILES: No.

22 MR. MCFARLAND: How many man-hours, so to

23 speak, how many correctional officer hours are

24 involved in having to escort a victim to U.C. Davis

25 Medical Center for an examination?

1 MS. VILES: I would say from the time they
2 left the institution to bringing the inmate back to
3 the institution, it would probably be approximately
4 eight to 12 hours, and on a transport there would be
5 two officers, and depending on the inmate, possibly
6 a sergeant.

7 MS. ELLIS: Or support person?

8 MS. VILES: And possibly now a support
9 person.

10 MR. MCFARLAND: Does the support person
11 now have an officer?

12 MS. VILES: It depends upon what the
13 support person, if it is an inmate.

14 MR. MCFARLAND: If it is an inmate, a
15 support person?

16 MS. VILES: I can't comment on that.

17 MR. SEXTON: Officer Viles, have inmates
18 ever made an improper comment to you?

19 MS. VILES: Inmate? Yes.

20 MR. SEXTON: Was it of a sexual nature?

21 MS. VILES: Yes.

22 MR. SEXTON: Thank you.

23 MR. MCFARLAND: Was the staff's attitude

24 towards -- just your opinion. You can't speak for

25 all, but what is the staff's attitude towards all

1 this PREA stuff? You have seen a marked change in
2 the last year. Is general banter that you hear that
3 it is a pain in the neck and it is overreaction and
4 kind of overlawyering or is it -- what is the
5 attitude?

6 MS. VILES: As a whole, the attitude is
7 professional. This is just one more tool that we
8 are given to provide a safe environment for the
9 inmate as well as ourselves. We like it to be safer
10 and secure, less violence, less crime, less
11 opportunities for an officer to get hurt.

12 MR. SEXTON: Does that happen?

13 MS. VILES: Happens daily.

14 MR. MCFARLAND: Assaults on officers?

15 MS. VILES: Yes.

16 MR. MCFARLAND: You would be the recipient
17 of the evidence?

18 MS. VILES: Correct.

19 MR. LEWIS: You are in a position to know

20 that?

21 MS. VILES: Correct.

22 MR. MCFARLAND: Well, I want to thank you

23 both.

24 Are there any follow-up answers that either of

25 you thought of that you wanted to share or anything

1 that you wanted to change or modify about your

2 testimony?

3 MS. VILES: No.

4 MR. LEWIS: No, thank you.

5 MR. MCFARLAND: We really appreciate your

6 time and all the effort you put into it.

7 We will be adjourned for 15 minutes.

8 (Panel 5 concluded at 10:33 a.m.)

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PANEL 6

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MR. MCFARLAND: Good morning. We are privileged to have Mike Gennaco, Chief Attorney at the Office of Independent Review of the L.A. Sheriff's Office, formerly a member of the esteemed staff of the Department of Justice.

Testifying after him will be Lt. David Alvey of the Alameda County Sheriff's Office, and then Donald Specter, attorney for the Inspector General Law Office.

Thank you for joining us and helping us understand the issue.

(Oath administered by Mr. McFarland.)

MR. MCFARLAND: Mr. Gennaco.

MR. GENNACO: Good morning. My name is Mike Gennaco. For five years I have had the opportunity to head up the Los Angeles County Office of Independent Review. Our group consists of a

20 cadre of six independent attorneys whose
21 responsibility it is to monitor allegations of
22 misconduct against personnel of the Los Angeles
23 County Sheriff's Department. Our responsibility is
24 to ensure a robust and fair investigation when
25 allegations of misconduct are made against deputy

1 sheriffs. We also have the ability to make
2 independent recommendations to the Department with
3 respect to the outcome of those investigations.

4 Finally, we regularly make recommendations for
5 systems reform regarding policies and practices of
6 the Department. Since our existence we have
7 reviewed hundreds of criminal and administrative
8 investigations, including occurrences of inmate
9 deaths, violence and other jail critical events. To
10 our knowledge we are the only oversight group who
11 actually has an office in the interior walls of a
12 prison or jail. In our case the Men's Central Jail,
13 which is the largest jail facility in Los Angeles
14 County, a structure that houses upwards of 5,000
15 inmates on a daily basis.

16 Our experience with county jails as an
17 outsider yet with inside access to facilities
18 provides us a unique vantage point from which to
19 address the issue surrounding jail rapes. Our

20 experience in Los Angeles County may provide one
21 perspective from which to shape the discussion
22 regarding some of the potential factors that may
23 contribute to jail rape and to suggest potential
24 ways to address the current situation. Accordingly,
25 we are pleased to have been invited to participate

1 in this hearing of the Review Panel on Prison Rape
2 so that we can share those experiences and
3 perspectives.

4 It might be helpful, though, to start with
5 some illustrative examples of jail rapes that have
6 actually occurred in L.A. County.

7 Case one. A 19-year-old male amassed a number
8 of parking tickets that he never got around to
9 paying. He was stopped on a traffic violation and
10 booked in county jail on a Friday night. Because it
11 was the weekend, he was not able to see a magistrate
12 until Monday. He was assigned to a dorm with about
13 100 other inmates, ranging from low level offenders
14 like him to state prisoners with violent pasts and
15 other violent felons awaiting sentencing.

16 The 19-year-old is assigned to a double-tiered
17 bunk in the back of the dormitory. Eventually, he
18 falls asleep. He is awakened by two state prisoners
19 housed in county jail who pull him off the bunk to a

20 mattress located in an even more secluded part of
21 the dormitory. He begins to struggle, but
22 eventually stops, feeling powerless to fend off the
23 assaults. Because scores of other inmates are
24 simply looking on as the assault progresses. He
25 does little to cry out. After the rape has

1 occurred, he assumes that it is hopeless to report
2 the incident and does not do so.

3 The next day one of the onlooker inmates is
4 teased by another inmate for his failure to stand up
5 for his white homie. As a result of those repeated
6 taunts, that inmate challenges one of the assailants
7 from the night before. That ruckus is broken up by
8 deputies and at that time the witness inmate states
9 that he needs to talk to the deputies. When he is
10 taken out of the cell, the inmate reports the rape
11 from the night before.

12 Eventually, charges are filed against the two
13 assailants, and they plead guilty and are sentenced
14 to long prison terms.

15 Case two. A female inmate is in custody and
16 returns from a court date. As she is escorted to
17 her cell, the deputy fails to secure the cell door.
18 A few hours later a male inmate worker trustee is
19 assigned to clean up the common area of the module.

20 He notices that the door to the cell of the female
21 inmate is ajar, walks into the cell and rapes the
22 female inmate.

23 The deputy assigned to monitor the module is
24 not at his post. After the assault, the female
25 reports the incident. A criminal investigation

1 results in the conviction of the trustee, and an
2 internal affairs investigation results in the deputy
3 being disciplined for his failure to secure the
4 inmate and monitor the inmate worker.

5 These two cases are in many ways similar to
6 other incidents in county jails and strikingly
7 different in a couple respects. As illustrated in
8 the first case, the opportunities for the commission
9 of rape are numerous in county jails. Most inmates
10 are housed in multiple person cells or dormitories.
11 Many of those housing assignments have areas which
12 are out of the visual purview of jail authorities.
13 Jail culture discourages intervention of ongoing
14 crimes occurring in the cells and dormitories. Many
15 victims of crimes in jails feel reporting such
16 crimes will not result in justice and may
17 potentially make their situation worse and fear
18 retaliation. Inmates usually have a criminal report
19 and their credibility inherently will be questioned

20 should they decide to press forward with reporting

21 the crime.

22 Finally, assailants facing life or long-term

23 sentences often feel that they cannot be further

24 effectively punished by the system, so have little

25 to lose in conducting further violent acts. On the

1 other hand, the two cases cited are different from
2 any of the rapes that occur in jail in that they
3 were reported and successfully dealt with by the
4 criminal justice and administrative system.

5 It is interesting that in the first case the
6 incident was reported by a fellow inmate, not out of
7 a sense of civic duty but because he was accused of
8 not standing up for a person of his race. The
9 second case is unique in that the performance issues
10 of the deputy who made it possible for the rape to
11 occur were addressed and not only the assailant but
12 responsible jail staff were held accountable.

13 One question, fundamental question, is what
14 about the jail that makes it a potentially target
15 rich environment for rapes? One, the design
16 structure of jails make them difficult to monitor.
17 Los Angeles County has by far the largest jail
18 system in the country, housing 18,000 inmates on any
19 given day in half a dozen facilities. The jails

20 themselves are a polyglot of structures, some over
21 50 years old. Many of the jails are designed in a
22 way that make it impossible to see the cells on a
23 24/7 basis.

24 For example, in the Men's Central Jail the
25 only way one can look in each cell is to walk down a

1 narrow gangplank. In some of the newer jails bunks
2 are stacked in twos or threes in dormitory settings.
3 Inmates can easily learn the blind spots of these
4 dormitories and use bedding and other materials to
5 further hamper the ability to monitor their actions.
6 There are relatively few cameras in the living
7 quarters of the jails.

8 Finally, staffing issues make frequent
9 monitoring of cells in dormitories a continuous
10 challenge for jail authorities.

11 Two, the nature of jail population increases
12 the likelihood of assault. When the jails were
13 built, most of the facilities were designed for a
14 different type of inmate that are currently being
15 housed there. In the past most jails were filled
16 with low level offenders, serving short-term
17 sentences. Currently, the resume of the typical
18 jail inmate has changed dramatically. Most of the
19 jail inmates are persons charged or convicted of

20 violent crimes. Scores of charged or convicted
21 murderers and rapists are now housed in county jails
22 on any given day.

23 While the victim class has been reduced
24 substantially, there still are inmates housed in
25 jails who are awaiting trial on nonviolent offenses

1 or have been sentenced to county jail. The
2 combination of the increased number of hard core
3 violent inmates and the reduced but still present
4 victim class presents clear opportunities for rapes
5 to occur.

6 Three, the jail culture does not foster
7 intervention or reporting of jail crimes. Inmates
8 soon learn that the dominant jail culture does not
9 tolerate intervening or reporting of jail crimes.
10 With the exception of racially tinged assaults
11 inmates do not usually intercede when they observe
12 violent actions occurring among fellow inmates. We
13 have learned of instances of prolonged assaults
14 eventually resulting even in murder in which inmates
15 in the same cell or room have done nothing to
16 interrupt or report those assaults. Inmates do not
17 cooperate with any subsequent investigation,
18 claiming to have been sleeping or otherwise not
19 witnessing the event. In two recent inmate murders

20 scores of inmates claimed not to have witnessed
21 several inmates stomping to death inmates in
22 confined areas.

23 This jail culture may go far to explain why in
24 the past six and one-half years there have been only
25 62 reported sexual assaults in Central Jail, a

1 facility housing 5,000 inmates on any given day. As
2 a result of this jail culture, victims of rapes will
3 often feel reporting the crime will not result in an
4 effective response by the criminal justice system.
5 Moreover, the victims may also feel that reporting
6 the crime may subject them to further harm in the
7 way of real or perceived retaliation for doing so.
8 To be labeled as a snitch often results for that
9 inmate in a custodial situation that in some ways is
10 as difficult to endure as the alternative of
11 ignoring the assault and hoping that it won't happen
12 again.

13 This mind-set is particularly prevalent in a
14 jail setting where people are being shuttled from
15 one housing situation to another. Unlike prisons,
16 where inmates are housed in the same facility and
17 housing assignment for years, county inmates are
18 constantly having their facility assignments
19 changed. This fact also potentially makes

20 identification of assailants difficult as the victim
21 inmate will likely not have had much experience with
22 them.

23 Four, the criminal justice system provides
24 little deterrent effect on inmates who commit rapes
25 in jail. For the reasons detailed above, there are

1 obstacles in the custodial situation that could well
2 suppress the reporting of rapes. Inmates are
3 certainly aware of this fact and could well surmise
4 the small likelihood of rape being reported would
5 embolden them to commit such crimes. Furthermore,
6 even when the rape is reported, barriers unique to
7 the custody environment make a successful criminal
8 filing and prosecution difficult. As noted above
9 inmate witnesses are often reluctant to cooperate in
10 any fashion with jail investigative authorities.

11 Second, defenses of identification may be
12 particularly effective in the relatively anonymous
13 jail situation in which inmates are constantly being
14 moved around. Finally, victim inmates will often
15 possess a criminal record that will call their
16 credibility into question and subject them to
17 significant impeachment at any trial proceeding.
18 These obstacles may help to explain why less than a
19 handful of prosecutions for sexual assault have come

20 out of a 5,000 inmate facility over the past five
21 years.

22 Perhaps as importantly with any jail crime,
23 even a rare conviction provides little deterrent
24 effect to the most harden criminals. Lifers cannot
25 be further effectively punished by even the most

1 significant jail convictions, and they know that.

2 For all these reasons, while allegations of jail
3 rapes should be aggressively investigated and, when
4 appropriate, prosecuted, the most effective way to
5 counter instances of jail rapes is to prevent them
6 from occurring in the first place.

7 So that leaves us: What should be considered
8 in any proposal to reduce the likelihood of jail
9 rapes from occurring in the first place?

10 One, examination of current jail housing
11 design.

12 As stated above, the design of housing areas
13 in many jail facilities make it very difficult to
14 monitor and detect inmate assaultive behavior as it
15 is occurring. To the extent feasible, lines of
16 sight need to be improved so those entrusted to
17 ensure the safety of inmates have the capability of
18 doing so. Inmate created obstructions that prevent
19 custody authorities seeing into inmate housing must

20 be discouraged and when present dismantled. As new
21 facilities are built or old ones upgraded, single
22 person housing units should be favored over
23 dormitories or multiple person cells.

24 Two, surveillance cameras.

25 Cameras can go far to enhance the ability of

1 jail authorities to monitor the activity of inmates.
2 They also can provide a recording of instances of
3 assault to help identify perpetrators after the
4 fact. The mere presence of cameras may provide a
5 deterrence to inmates who are considering committing
6 such crimes from even doing so.

7 While privacy issues do surround the posting
8 of cameras in cells, such issues must give way to
9 the overarching interest to providing safety to
10 inmates housed in multi-person cells or dorms.

11 Three, jail staffing.

12 Jail rapes will occur less frequently if
13 inmates have the real perceived belief that their
14 activities are being monitored. Especially in
15 facilities that do not present jail authorities with
16 the continuous ability to monitor the housing unit,
17 regular and frequent patrol of deputies will reduce
18 the likelihood of assaultive behavior occurring in
19 the inmates housing areas. In order to effectively

20 run such foot patrols, however, staff levels may
21 need to be examined to ensure sufficient resources
22 at the jail to conduct such monitoring.

23 Overcrowding.

24 Jail authorities that face overcrowding must
25 come up with creative and, unfortunately, nonideal

1 places to house the extra influx of inmates. As a
2 result, jail areas that were not designed for
3 housing nor conducive for monitoring are sometimes
4 used to house inmates. In L.A. County inmates have
5 been murdered who are housed in areas of the jail
6 that were not designed for housing and that were
7 virtually impervious to monitoring by jail
8 authorities. The same potential exists with jail
9 rapes.

10 Housing inmates in certain areas where
11 monitoring is ineffectual or problematic can
12 increase the likelihood that certain inmates will
13 prey on others.

14 Five, classification and housing decisions.

15 The decision about where to house inmates will
16 have tremendous implications on whether that inmate
17 will be safe while in custody or prevented from
18 harming other inmates as the case may be. It is
19 critical that jail authorities carefully screen

20 incoming inmates and make principled decisions based
21 on precursor information, such as criminal history,
22 in deciding the appropriate classification of the
23 inmate.

24 Once the inmate has been classified,
25 principled decision-making must occur with regard to

1 where the inmate will be housed and in multi-person
2 arrangements with whom. These classification and
3 housing decisions must be continually updated as
4 jail authorities receive new information about how
5 the inmate is functioning in the custody environment
6 and as changed circumstances regarding their
7 criminal charges occur.

8 Six, programming.

9 Unfortunately, most jail systems do not have
10 the ability or resources to provide programming for
11 inmates in custody. As a result, most inmates spend
12 the majority of their time in custody sleeping. The
13 idleness faced by inmates is likely a participatory
14 factor that causes some to act out in violent ways
15 on fellow inmates with whom they are housed. In
16 addition, the lack of programming provides little
17 incentive for inmates to obey the rules of the jail.

18 Seven, this is my deal, review and
19 accountability.

20 When a violent act, such as a rape or murder
21 occurs, it is incumbent on jail authority to
22 thoroughly and critically review the incident from a
23 number of perspectives. While certainly there
24 should be a focus on the potential criminal violent
25 act for possible prosecution, these critical events

1 also provide potential insight with respect to
2 weaknesses in the jail on an individual or systemic
3 basis. That is, the incident should be carefully
4 scrutinized to learn whether performance issues by
5 jail staff may have helped allow the opportunity for
6 the violent act to occur.

7 For example, a jail staffer who fails to
8 conduct security checks on a certain row creates
9 increased opportunity for any inmate to commit a
10 jail rape free from the likelihood of detection or
11 interruption. Those entrusted with running the
12 jails should ensure a broad ranging and thorough
13 review of the performance of its staff, and when
14 appropriate, hold those accountable who fall short
15 of the agency's expectations.

16 Any act of violence should also be scrutinized
17 from a systemic basis as well. A careful
18 examination of each incident can provide insight
19 into how the perpetrator was able to carry out his

20 act. Through this examination, the jail can improve
21 policies, systems and ways of doing business so that
22 the likelihood of future acts of violence can be
23 reduced. Too many times this feedback loop is not
24 provided, and jail authorities fail to learn from
25 the lesson of the past.

1 Finally, how can the outside community be best
2 informed about issues endemic to jail rape and other
3 violence?

4 I would say there are two ways. One is
5 access. One fundamental way to inform the community
6 about jail conditions that may lend themselves to
7 occurrence of the jail rape and other violence is to
8 permit members of the public or their
9 representatives meaningful access to the
10 correctional facility itself. Prisons and jails are
11 traditionally seen as closed societies, largely
12 shielded from public purview. Often under the
13 rubric of security managers of these institutions
14 have fended off entreaties from outsiders to enter
15 into the jail or prison walls.

16 The traditional view had been undercut by
17 litigation and questioned by some progressive
18 managers and leaders of law enforcement
19 organizations. As a result, in the county of Los

20 Angeles, for example, the ACLU is permitted regular
21 and routine access to the jails to talk with inmates
22 and inspect jail conditions. Similarly, we at the
23 OIR are provided continual and complete access to
24 jail facilities.

25 As noted above, after a spate of jail murders

1 and at our request, we were provided an office
2 inside the jail perimeter. This concept of allowing
3 outside entities open and continuous access to the
4 prison and jail facility is essential to external
5 education of prison abuse, violence and related
6 issues.

7 And two, an important element is transparency
8 and reporting.

9 Clearly hearings such as the one that has
10 occurred yesterday and is going on today by this
11 panel are important in shedding light and helping
12 identify common factors that may impact the
13 frequency of jail rape and violence. The work of
14 this panel in bringing persons together to share
15 their experiences and perspectives are important
16 steps in addressing the issue and identifying
17 solutions.

18 In addition, the role of public interest and
19 advocacy groups, such as Don Specter who is a friend

20 of mine and at our table here today, in bringing
21 these issues to the consciousness of the community
22 are essential in educating the public and other
23 important stakeholders on the factors that may
24 exacerbate or lessen the frequency of violence. In
25 addition, prison jail authorities can facilitate

1 transparency by providing access to confidential and
2 otherwise sensitive information to independent
3 oversight groups. The independent oversight groups,
4 such as we at the OIR, can then stand in the shoes
5 of the public and review and evaluate internal
6 critical events and policies and procedures. The
7 oversight groups can use the information from their
8 review not only fulfill the mandates to ensure
9 thoroughness, fairness and objectivity in the
10 agencies' internal processes, it can also push the
11 concept of transparency of these events.

12 In L.A. County we have worked with the sheriff
13 to provide a significant level of detail and
14 transparency with regard to the jail violence, in
15 particular inmate murders. That detail is crucial
16 in order for members of the public to learn about
17 the issues that impact on the safety of inmates and
18 then be able to assess the responsiveness of those
19 civic or departmental leaders who are held

20 responsible for the important issues in our jails.

21 Thank you.

22 MR. MCFARLAND: Thank you.

23 Lt. Alvey, thank you for being here on short

24 notice and even shorter than some of the others on

25 the panel. And I understand that you're available

1 for questions?

2 MR. ALVEY: Yes.

3 MR. MCFARLAND: So I think unless there is
4 anything immediately for Lt. Alvey, we will go to
5 Mr. Specter, hear his prepared testimony and address
6 questions for the whole panel.

7 MS. ELLIS: Yes.

8 MR. MCFARLAND: Thank you, Mr. Specter,
9 for being here.

10 MR. SPECTER: You're welcome. Because of
11 the short notice I was unable to give you a written
12 testimony.

13 MR. MCFARLAND: Can you hear in the back?

14 MR. SPECTER: Anyway, my name is Donald
15 Specter. I am the Director of the Prison Law
16 Office. The Prison Law Office is essentially a
17 public interest law firm which has one main goal,
18 and that is to improve the conditions of confinement
19 for California prisoners and youthful offenders,

20 whether they be in state prisons, the state youth

21 authority or the state juvenile facilities.

22 The Prison Law Office has been in existence

23 since 1976, and we have filed lawsuits and done

24 other advocacy work on behalf of that group that I

25 just mentioned on a range of prison conditions,

1 virtually all conditions that you can think of.

2 The Department of Corrections and
3 Rehabilitation is now operating under either
4 injunctions or consent decrees in a large number of
5 cases that we have brought. So we are very familiar
6 with the conditions. We have people in California
7 prison systems doing monitoring of these consent
8 decrees or injunctions on a daily basis. We get
9 letters from over a hundred prisoners a day seeking
10 our assistance, which we can't possibly keep up
11 with. We negotiate frequently with the Department
12 of Corrections about trying to improve the
13 conditions. We are not a profit organization, and
14 we have staff of 13 lawyers.

15 In spite of the fact that we have brought all
16 these lawsuits and have expertise in virtually every
17 aspect of prison conditions, we haven't really done
18 much in the area that you're interested in. Partly
19 that is because of the lack of information that we

20 received from prisoners, their willingness to
21 disclose even to us the fact that they have been
22 sexually abused. And I think so that limits my
23 ability to kind of give you the information that I
24 think you need, but I think it is a problem that
25 pervades the subject area which you are dealing

1 with.

2 When I go into the prisons and talk to
3 prisoners in these dormitories, which I will
4 describe in a moment, which are rife for abuse, you
5 get very little information about sexual assault,
6 although they will say that prisoners steal property
7 or they do this or that, you have to have, I think,
8 a special relationship with the prisoners before
9 they will begin to disclose anything like that.

10 We have done some cases which border on this
11 subject. We brought -- we filed a civil suit
12 against that male physician for sexually assaulting
13 a female patient, and that case settled for a
14 relatively small amount of money after the
15 physician, who is charged criminally in the case was
16 acquitted of the charges. And it was again some of
17 the things that Mr. Gennaco was describing.

18 You had prisoner with a -- from a --
19 relatively uneducated, who was going against a

20 physician who is very well educated and a prisoner
21 who had a criminal record, and it didn't make for an
22 even match, and the lawyers weren't matched evenly
23 either.

24 We have also encountered juveniles as
25 prisoners who have been raped by other prisoners,

1 but again not large numbers. At least one male
2 prisoner informed us that he had been forced to have
3 sexual encounters with a male staff member. We have
4 had juvenile offenders in the state juvenile system
5 approach us with those offenses. I will describe
6 that in a moment. Before I do, I would like to put
7 this in the context of what I believe is sort of a
8 larger problem.

9 I believe that the prevention of rape, of
10 sexual assault is a subset of a larger issue of
11 prevention of violence to prisoners, in other words,
12 keeping them safe in prison while they are there.
13 And for this reason many of the same principles
14 which apply to prisoner safety, which Mr. Gennaco
15 just covered in his excellent presentation, apply
16 also to prisoners who are at risk of sexual abuse.
17 And those correctional principles are no secret.
18 They are very standard.

19 And the first and most basic one in this area

20 is classification. Upon entry, prisoners must be
21 classified according to an objective assessment to
22 determine the risk they pose to either inflict or
23 suffer harm. In its most basic form, these
24 classifications principles require that prisoners
25 who are at a higher level of risk from inflicting

1 harm be separated from those who are vulnerable to
2 the infliction of harm.

3 Some of the -- it is also no secret who is
4 vulnerable to risk. Prisoners we found who are, for
5 example, mentally ill are at risk more than other
6 prisoners. Prisoners who are developmentally
7 disabled, mentally retarded. Prisoners who are weak
8 for some reason or another or prisoners who are
9 young and as such are inexperienced of the ways of
10 prison society, such as the young man that
11 Mr. Gennaco mentioned who was incarcerated for
12 having parking tickets. You don't go to prison for
13 parking tickets, but it does indicate the type of
14 person who is vulnerable.

15 The youth facilities in California, what they
16 call Division of Juvenile Justice now, used to be
17 called the California Youth Authority, have not had
18 a working classification system for years, and only
19 now because of the court order and the lawsuit that

20 we have brought are these facilities beginning the
21 rudimentary efforts to classify prisoners according
22 to levels of risk. And consequently, we have found
23 youth who have been subject to violence from other
24 youths, including sexual assault. And that is what
25 happens, in my opinion, when a facility operates

1 without a proper classification system. And the
2 results of that is illustrated by the following
3 example:

4 This was a kid who was put into a double cell
5 in one of the state's highest maximum security, if
6 there is such a thing, in the youth authority. He
7 was put into a double cell. A week later he got
8 into an argument with his cell mate, which turned
9 violent. They fought, the youth told us, for about
10 30 minutes, yet no intervention by the staff during
11 that time.

12 And the cell mate said, "I am going to stop
13 fighting. I don't want to fight anymore. Let's
14 cool it."

15 The youth who complained to us started to
16 climb up to the top of his top bunk. While he was
17 getting up to his top bunk, he was bludgeoned on the
18 head by the cell mate knocking him unconscious. And
19 when he woke up he had pain in his rectum and blood

20 in his boxer shorts.

21 That led, of course, to a lot of anxiety on
22 his behalf, and eventually the staff became aware of
23 this incident, but not until it was over. This
24 young man was not taken to an environment where he
25 could recover from his trauma. In fact, instead he

1 was placed in administrative segregation which at
2 that time and still today consists of being locked
3 up for 23 hours a day in a cell with no programming,
4 no contact with other people. And then no
5 counseling or treatment, besides the visit to the
6 doctor for injury.

7 After that he was transferred to the place,
8 which is almost unbelievable, but he was transferred
9 to a housing unit at another prison but this
10 particular housing unit was for sex offenders. The
11 only medical health treatment that he received for
12 his trauma was not rape counseling, which he
13 requested, but was medication that was designed to
14 help him go to sleep. The result was by 5:00 every
15 day he was falling asleep, and that was it.

16 So beside the obvious failure -- so this
17 happened just within the last year or so. Beside
18 the obvious failure to properly classify him before
19 the rape and list what I call cruel transfer to

20 segregation and then even crueler transfer to a sex
21 offender unit, this case shows what happens to rape
22 victims when officers don't receive the appropriate
23 training on what to do to people that have been
24 sexually assaulted, when there aren't enough
25 custodial supervision like Mr. Gennaco mentioned,

1 when counseling is not provided, when safe housing
2 isn't available because of overcrowding. And what
3 makes the situation worse in many respects is the
4 overcrowding and also the attitude of the officers
5 and the other prisoners to sexual assaults.

6 One function of overcrowding is inadequate
7 staff and another is also that the housing areas,
8 the prisoners are housed in areas that they are not
9 designed -- that are not designed for careful
10 supervision. In California prisons, for example,
11 prisoners are stacked three high in bunks in
12 gymnasiums and day rooms that have been converted to
13 housing units. I don't know if you've seen some
14 pictures. They were in the paper just recently. We
15 filed a lawsuit about overcrowding.

16 MR. MCFARLAND: We toured.

17 MR. SPECTER: Great.

18 You saw that, I am sure, that it is impossible
19 to maintain the line of sight supervision in these

20 conditions for the two or three officers who patrol
21 that during the day. And I would say at night it is
22 just about impossible to do anything without fear of
23 being caught among the prison population. Because
24 from what I have been told, the officers, they are
25 up on the stage sometimes or in the post and you can

1 imagine late at night they are not walking around.

2 They are just sitting there. So the other -- that

3 problem is pretty much self-evident.

4 The other problem, I think, is insensitivity

5 by the staff to sexual assaults. It is not unusual

6 at all for prisoners who are victims of sexual

7 assaults to receive harsh treatment instead of

8 counseling that they need. Under the circumstances

9 I think it is difficult for a prisoner to be able to

10 tell an officer or guard or counselor that he has

11 been sexually assaulted because he knows, he's seen,

12 he's heard the response: the sexual jokes that are

13 made as a matter of course during the day. In fact,

14 we found instances where one staff was actually

15 aware of the problem. They actually perpetuated

16 rather than reduce or mitigate the problem. They

17 have teased prisoners. They let other -- this

18 happened in youth authority. They have made

19 comments, public comments, while the youth is there.

20 They let other youths know that the youth who has
21 been sexually assaulted has, in fact, been sexually
22 assaulted.

23 I think that is in part due to the culture of
24 most of the correctional facilities where weakness
25 and vulnerability are borne by both the staff and

1 people who are incarcerated in them. And I think
2 changing that culture demands appropriate training
3 of staff. But officers rarely receive training on
4 how to handle sexual assault victims, other
5 mechanical aspects of investigating a crime and
6 taking to the hospital and the like. And it also
7 demands, I think, education of prisoners about the
8 steps that they can take to report and prevent their
9 being sexually assaulted.

10 The other problems you have in a prison where
11 there is very little privacy is the confidentiality
12 of the reporting itself. The women who I told you
13 about who claimed and what I believe was sexually
14 assaulted by the physician, it was a very big
15 problem when she came to us, what do we do. Because
16 to report it was to give information to the doctor
17 that she had before this time, and that was spread
18 throughout the prison and we eventually reported it
19 with the assurance of confidentiality from the head

20 of the Internal Affairs Office for the Department of
21 Corrections who I happen to know. If I didn't know
22 that person, my professional feeling is that we
23 would have a major problem.

24 The other problem we have seen in California,
25 prisons, and Mr. Gennaco is helping us to remedy, is

1 the fact that investigations are often terrible by
2 internal affairs. Certainly they were at that time.
3 If you can't have any certainty that the
4 investigations are going to be adequate and actually
5 rigorous and thorough and actually get at the truth,
6 then what good is the reporting in the first place?
7 So those are the major problems.

8 So I listed about six bullet points, about
9 seven bullet points about what needs to happen to
10 reduce sexual assault. These are no secrets. There
11 must be adequate policy and procedures for
12 preventing reporting, treating and investigating
13 sexual violence. The staff must be trained on the
14 policies and procedures.

15 Third, the staff must be educated about the
16 harm caused by sexual violence, the reporting
17 mechanisms and obligations. There must be a
18 reporting system that guarantees confidentiality.
19 The prison must have an effective classification

20 system and a safe place to house potential and
21 actual victims. There must be an appropriate line
22 of sight supervision by correctional staff. And
23 this is something that the prison is not -- this is
24 something that is prison correctional operations 101
25 that you must have line sight supervision. But I

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1 found in my dealings with prisons it's actually hard
2 to make them have enough officers to do line of
3 sight supervision. They just make excuses about why
4 the staffing is adequate. And, seven, the prison
5 can't be so overcrowded that an effective
6 classification and supervision is impossible.

7 It seems to me that it wasn't too long ago
8 that rape, when I was growing up, that rape victims
9 in the free population were not treated with the
10 respect that they deserve. And today you find that
11 there aren't jokes about rape, but there are still
12 some jokes about prison rape. You can see it on TV
13 or search the Web and you can find it within a
14 minute, about rape in prisons.

15 And it seems to me that the police and the
16 medical communities have to become educated about
17 the seriousness of the harm in the prisons and the
18 need to protect and treat the victim within the
19 prison system. They have done that in the

20 community, and it seems there is no reason the same

21 change can't occur in the prison environment.

22 Thank you.

23 MR. MCFARLAND: Thank you very much, Mr.

24 Specter. Your seven suggestions were adequate

25 procedures, staff must be trained, staff must be

1 educated on reporting, guaranteed confidentiality.

2 What was the next one?

3 MR. SPECTER: Staff must be educated about
4 the harm caused by sexual violence, reporting
5 mechanisms and their obligations about what to do
6 when there is a report. They must be a reporting
7 system that guarantees confidentiality.

8 I forgot to mention that there must be an
9 adequate investigation process. Prisons must have
10 an effective classification system and a safe place
11 to house potential victims, appropriate line of
12 sight supervision and an end to overcrowding.

13 MR. MCFARLAND: Can we get the hard copy
14 of your remarks?

15 MR. SPECTER: If you don't mind some blue
16 pens.

17 MR. MCFARLAND: That makes it more
18 authentic. You get more money on the street for the
19 actual.

20 MR. SEXTON: Mr. Specter, the question of
21 confidentiality keeps coming up, and I am not
22 familiar with California law by any means. But how
23 do you maintain confidentiality when the allegation
24 is made against the staff member, that it will lead
25 to an administrative hearing as well as possible

1 criminal action or criminal action? How do you
2 protect that confidentiality?

3 MR. SPECTER: I think maybe Mr. Gennaco is
4 better off answering it. In our experience the
5 first thing that has to happen is they have to be
6 able to report the incident without everybody seeing
7 it in the prison. So, I mean, that is the first
8 thing.

9 The second thing, everybody knows that if the
10 case is criminal, there will have to be disclosure.
11 But that is later and also after you have had an
12 opportunity to put the victim in a safer place.
13 Also what has to happen later, the investigative
14 process has to be professional so that the
15 disclosure isn't done until the victim is
16 comfortable with it and they are safe and it is done
17 at a later point when you gathered all the other
18 kind of evidence that you may need to determine
19 whether that the sexual assault occurred. It can be

20 done. I've seen it done. You have to be sensitive

21 and careful.

22 MR. MCFARLAND: Lt. Alvey, you have heard

23 the testimony of these two professionals. Anything

24 jump out at you that you would want to either affirm

25 or take a different tack on? I am not asking you to

1 critique or rubber stamp anything they said.

2 Anything that just kind of jumped out at you that
3 you want to comment on?

4 MR. ALVEY: No.

5 MR. SEXTON: If I may be reviewing Lt.
6 Alvey's book, they're triple crown winners for
7 accreditation of law enforcement for their jail and
8 medical service. You have adopted the, I think,
9 four latest standards of ACA in here regarding PREA?

10 MR. ALVEY: Yes.

11 MR. SEXTON: They are enclosed in his
12 submitted testimony.

13 MR. ALVEY: I would like to take the
14 opportunity on behalf of Sheriff Plummer, Under
15 Sheriff Lucia, I would like to thank the panel for
16 the opportunity to participate in this testimony.

17 MR. SEXTON: How many -- there was a
18 question that came up yesterday. I am going to ask
19 this of Mr. Gennaco also, but in regard to housing

20 of suspects that come into your county jail. I am
21 assuming your facility is 80-some percent pretrial?

22 MR. ALVEY: The statistics are actually in
23 the book. We are probably a little less than that.

24 MR. SEXTON: Majority pretrial?

25 MR. ALVEY: Majority are pretrial.

1 MR. SEXTON: How many folks come into your
2 facility and identify themselves as gay or
3 transsexual and do they receive any different
4 treatment once they've identified themselves in
5 regard to housing?

6 MR. ALVEY: Identified? If they identify
7 themselves as homosexual, then they will be
8 classified to protective custody, ordinarily. If
9 there are other issues, it makes it a classified --
10 one we call dual classification. If they come in
11 homosexual, they go to administrative segregation.
12 We have approximately -- I don't have the exact
13 figure -- about 100 inmates on average at this given
14 time classified as homosexual, 2 percent of our
15 population.

16 MR. SEXTON: When they go administrative
17 seg, is that lockdown?

18 MR. ALVEY: Yes.

19 MR. MCFARLAND: I am a little confused.

20 If they self-identify as homosexual, they go to ag

21 seg?

22 MR. ALVEY: No.

23 MR. MCFARLAND: Protective custody?

24 MR. ALVEY: Initially they are in

25 protective custody. They have what I call, what we

1 call dual classification. That happens to other
2 classifications also. They are protective custody
3 and mental, they will be in ad seg. It's hard to
4 have a special house within a special house.

5 MR. MCFARLAND: What form does the
6 protective custody take without a mental
7 classification or any other dual?

8 MR. ALVEY: Protective custody house is
9 just what we call special handling house. Depending
10 on their classification, they're medium, mental or
11 minimum and maximum security. There will be open
12 dorms for minimum, and medium and maximum security
13 will be two man cell. They won't be kept from each
14 other. They will be let out together, so forth,
15 interaction.

16 MR. MCFARLAND: This is something like
17 sensitive needs unit in the prison context?

18 MR. ALVEY: I am not familiar with that
19 term.

20 MR. SEXTON: First, I see your population
21 is down to 18,000. I heard it was up to 23,000.

22 MR. GENNACO: I was being conservative.
23 It goes up and down.

24 MR. SEXTON: It was 23,000 last time I was
25 out to visit you. Can you explain what K11 is? We

1 were told about that yesterday.

2 MR. GENNACO: K11 is a designation given
3 to, as my panel member indicated, whenever an inmate
4 who is coming into the system in Los Angeles County
5 self-identifies as homosexual or transsexual, he
6 will be assigned to the K11 housing area. It is
7 some dormitory housing, some single person cells,
8 some dual man cells. But they are segregated from
9 the rest of the jail population.

10 This is an issue that is under some
11 controversy or media review currently in Southern
12 California, by the way. There was recently a murder
13 in Orange County and in the Orange County system
14 they do not, although they used to, they do not
15 anymore segregate out individuals who come into the
16 system who claim they are homosexuals.

17 MR. MCFARLAND: Was the murder victim
18 homosexual?

19 MR. GENNACO: Yes.

20 MR. SEXTON: Can you explain one other
21 thing for me? Again we don't have it in Alabama,
22 but I understand you have here in regards to
23 Internal Affairs investigations, Police Officers
24 Bill of Rights can be evoked by any peace officer
25 who is under investigation.

1 MR. GENNACO: That is correct.

2 MR. SEXTON: Can you explain how this
3 would come to play in an Internal Affairs
4 investigation?

5 MR. GENNACO: Yes. One thing we have
6 tried to get the Department to do, and they have
7 agreed to do this in large part, particularly with
8 regard to critical incidents, like suicides and
9 homicides and other significant assaults in the
10 jails, is to not only look at the perpetrator, which
11 is an inmate, but also to look at it from a more
12 holistic view, and if there are performance or
13 accountability issues that involve potential
14 violation of policy, for example, a deputy who does
15 not perform his mandated Title XV safety checks,
16 then we ask the Department to look at those
17 performance issues through the prism of
18 administrator Internal Affairs investigation.

19 When an Internal Affairs investigation is

20 launched, peace officer's Bill of Rights here in
21 California provides a lot of protections to peace
22 officers with regard to the way in which those
23 investigations needs to be carried out. So, for
24 example, under the peace officer's Bill of Rights
25 before you are allowed to interview a subject of the

1 investigation, he or she has a right to have a
2 District Attorney or representative present during
3 those interviews. The interviews have to be
4 conducted with notice. There have to be certain
5 kinds of other provisions, as tape-recording of the
6 interview has to be conducted. There is a minimum
7 of two interviewers that can conduct the
8 investigation.

9 So there is a whole host and litany of
10 protections that are afforded staff when an Internal
11 Affairs investigation is --

12 MR. SEXTON: Does it also Garity Warning?

13 MR. GENNACO: Yes. If you are doing an
14 Internal Affairs investigation, you will probably be
15 required to compel the subject before the subject
16 would agree to talk to you, before any ability to
17 use any information in an Internal Affairs
18 investigation for criminal prosecution would
19 probably be precluded.

20 MR. MCFARLAND: Just explain for some of

21 us what a Garity, G-a-r-i-t-y, is.

22 MR. GENNACO: It comes out of a case, I

23 believe, that was decided by Justice Douglas way

24 back when in the '60s. But essentially -- and the

25 majority did agree with him on the Supreme Court.

1 Essentially, what it says is that if you are public
2 employer you are entitled to information about what
3 has transpired, you are entitled to be able to
4 interview your employees regarding any allegations
5 of misconduct. However, if you do so in
6 administrative setting, what the Supreme Court has
7 said is that you can't then turn around and use the
8 information you get from the employee in a criminal
9 case because to do so would be violation of the
10 Fifth Amendment right not to incriminate themselves.

11 If you go down the path of administrative
12 investigation, generally any attorney representing
13 the employee will demand that you give that Garity
14 warning in saying that I am ordering you to talk to
15 me.

16 MR. SEXTON: The Police Officer's Bill of
17 Rights, would it also -- as long as they are a peace
18 officer, would that have, in any way play into a
19 criminal investigation? Is there anything that --

20 is the Police Officers Bill of Rights just for civil

21 or internal?

22 MR. GENNACO: It has to do with

23 administrative investigations. The Peace Officers

24 Bill of Rights has no applicability to criminal

25 cases. But staff deputies and unsworn staff can all

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1 invoke the Fifth Amendment right when, in fact,
2 there is a criminal investigation going on. What
3 often happens is that the sheriff's departments if
4 there is any potential criminality of staff members,
5 the criminal investigation will take precedence and
6 the deputy or the staff member will have an option
7 whether to provide a voluntary statement to those
8 criminal investigators. They may decide not to do
9 that.

10 In many cases they do decide not to do that.

11 In which case you use what information you have
12 outside of that statement that you may not get from
13 staff and try to develop the case best you can.
14 Then what happens, that information is presented to
15 the District Attorney. The District Attorney makes
16 a decision. If the decision is to decline the case,
17 it is usually then when the administrative
18 investigation actually kicks in.

19 MR. SEXTON: To your knowledge, how many

20 law enforcement agencies have offices of independent

21 review?

22 MR. GENNACO: None. And almost no jails

23 or prison groups in particular have any real kind of

24 oversight. There is some oversight with the IG's

25 office on the federal side. I am pleased to say in

1 California, as a result of some of the work that was
2 forced upon the Department in some way by Don
3 Specter and his group, there is now being created a
4 Bureau of Independent Review. The Bureau of
5 Independent Review is an oversight group that was
6 patterned after our group down in Los Angeles County
7 and will be working to ensure effective internal
8 investigations of staff misconduct for the statewide
9 California Department of Corrections and
10 Rehabilitation.

11 MR. SEXTON: Do you have the ability, if a
12 civil case arises, do you have the ability to,
13 during your investigation, to settle out with the
14 other attorney? Does that fall over to you?

15 MR. GENNACO: The civil litigation goes in
16 its own direction, and it is defended by attorneys
17 apart from us. But one thing that I think many
18 departments don't do, unfortunately, is they figure
19 that civil litigation, the lawyers are going to deal

20 with that. They don't learn from what has gone on
21 in the civil case to help address either
22 individually or systemically issues that are coming
23 out of that civil case.

24 So what we try to do is learn about those
25 civil cases and provide that feedback back to the

1 Department and say, "Look, you just paid \$600,000
2 here. Something went wrong in the jails. Let's try
3 to figure out what went wrong in the jails rather
4 than paying the money and moving on to the next
5 crisis."

6 MR. MCFARLAND: Mr. Gennaco, why would
7 folks with outstanding traffic tickets be placed in
8 the presence of lifers in your facility?

9 MR. GENNACO: The reason is because they
10 are almost -- the jail is virtually full these days
11 with lifers. The idea, there are very few, very,
12 very few minimal security or nonviolent offenders
13 currently housed in Los Angeles County jails. I
14 would say in the single digits. That in some ways
15 is good for nonviolent offenders. They are diverted
16 out and not housed in custody. On the other hand,
17 for the few that do remain it presents a very
18 significant imbalance between the violent and the
19 nonviolent offenders.

20 Unfortunately, in the county jails there is
21 not enough room to house individually nonviolent
22 offenders. The other problem that we have seen is
23 going back to the classification issue. Those are
24 critical decisions that are made on a daily basis,
25 if not several times a day, with regard to inmates

1 with whom they are going to be housed with. Because
2 the majority of the inmates are housed in a multi
3 person facility it is critical those decisions be
4 made carefully.

5 Recently the Sheriff's Department -- two years
6 ago I would have had to report to you that the
7 Sheriff's Department in making those classification
8 decisions largely left the decisions about housing
9 up to the individual senior deputy of the day at a
10 particular dormitory. And they were just based on
11 whatever beds that he or she had available. Those
12 beds were going to be filled with whoever came in on
13 the bus. Today, as a result of some of the violence
14 that has occurred as a result of, I think,
15 unprincipled decision-making, there is now a central
16 classified housing unit that is responsible for
17 those decisions.

18 Is it fixed? No. Is it better? Yes. But we
19 continually see that decisions that have been made

20 that were not made based on all the information
21 available to the jail authorities result in
22 tragedies, result in murders, result in jail rapes.
23 Those kind of decisions need to be important,
24 important critical decisions to this whole issue, I
25 believe.

1 I think that, for example, the North Point
2 System, which you may have heard testimony about, is
3 the major, most progressive classification system
4 that exists. It sort of decides security levels of
5 inmates based on criminal history and other things.
6 In my view, the North Point System doesn't go far
7 enough.

8 For example, Don was talking about the
9 particular vulnerability of young people in jails or
10 in the prisons. In the jails what we find is there
11 is a particular vulnerability of older --

12 MR. SEXTON: I think you may have gone on
13 something on the North Point classification.

14 MR. MCFARLAND: I am not familiar with it.

15 MR. SEXTON: You are not familiar with it?

16 MR. MCFARLAND: No.

17 MR. GENNACO: The North Point System is a
18 system that was developed, adopted by a lot of jails
19 that is used as a guide in decision making, decision

20 tree guide that sort of -- that what you do is you
21 get intake from the inmates, and based on that
22 intake and your independent research, criminal
23 history and et cetera, et cetera, that comes in with
24 the intake, each inmate gets a number. That number
25 goes from one to nine, nine being the most violent,

1 the most susceptible of being violent in custody.

2 Then what you're supposed to do with that
3 information, to use the number to classify people
4 and house them in appropriate areas in the jails
5 that you have available. But as said, the North
6 Point System doesn't take into consideration certain
7 characteristics that I think also need to be
8 considered, such as age of the inmate.

9 We had three or four murders recently where
10 older inmates have been killed and I think probably
11 sexually abused in other cases that have not been
12 reported because of the fact that older inmates are
13 less likely or less able to defend themselves.

14 MR. MCFARLAND: What other factors do you
15 think the North Point System should add to the list?

16 MR. GENNACO: Well, one thing that I
17 think, by and large, it is a pretty good system. It
18 needs to be tweaked a little bit and characteristics
19 unique to individuals need to be considered. For

20 example, if the inmate is in a situation where he is
21 cooperating with authorities, he is going to be more
22 vulnerable to all kinds of violent attacks. If that
23 information is made known and through housing
24 decisions and keep away status, those kinds of
25 inmates need to be specially housed.

1 MR. MCFARLAND: Inferably, the North Point
2 status doesn't consider whether the person is a
3 snitch?

4 MR. GENNACO: No. That doesn't mean that
5 jails don't consider it or prisons don't consider
6 it. It is just not built into the North Point
7 System.

8 MR. MCFARLAND: How about sexual
9 orientation, apparent or real?

10 MR. GENNACO: I don't think that sexual
11 orientation also is included. Although, again, most
12 jails in my view, in California at least, segregate
13 based on reporting of homosexuality. Orange County
14 is the exception.

15 MR. MCFARLAND: Self-reporting?

16 MR. GENNACO: Yes.

17 MR. SEXTON: Lt. Alvey, would you have or,
18 Mr. Gennaco, you can answer this, when you have
19 information regarding threats, sexual orientation,

20 so on and so forth, that you are even cooperating
21 with the authorities, do you have that individual,
22 once they are sentenced and they go to the state, is
23 that information passed on to the state?

24 MR. ALVEY: If we have inmates who have
25 been problems to us or we believe is going to be a

1 problem to the state prison, we do pass that
2 information on.

3 MR. SEXTON: Do they accept the
4 information?

5 MR. GENNACO: Oh, yeah.

6 MR. SEXTON: Do they ask you for that type
7 of information?

8 MR. GENNACO: They don't solicit it. We
9 just provide it.

10 MR. MCFARLAND: What kind of information
11 might be included in that?

12 MR. ALVEY: An inmate assault towards
13 staff, assault towards other inmates.

14 MR. MCFARLAND: How about if he has been
15 assaulted, would you pass that on to the prison?

16 MR. ALVEY: Probably not as a rule.

17 MR. SEXTON: Would it be part of his
18 medical reports?

19 MR. ALVEY: Yes.

20 MR. MCFARLAND: Medical records go from

21 your facility to the prison?

22 MR. ALVEY: I don't believe we --

23 MR. SPECTER: No, they don't. Prison

24 systems get -- if they are lucky, they get a piece

25 of paper, a summary of the diagnosis and

1 prescription medication for the records.

2 MR. MCFARLAND: Would you agree with that,
3 Lt. Alvey? Do you know?

4 MR. ALVEY: Not entirely. They refuse
5 inmates for medical reasons.

6 MR. MCFARLAND: CDCR refused some of your
7 inmates?

8 MR. ALVEY: Number one, tuberculosis
9 testing. They won't take anybody who hasn't had a
10 recent TB test. We provide that information.

11 MR. SEXTON: Mr. Specter, why would they
12 not take it?

13 MR. SPECTER: I think there is a
14 confusion. I just said that the prison system
15 doesn't get the medical chart for the jail inmate.
16 They get a summary of what medications the prisoner
17 is on if they are lucky. I wasn't talking about
18 whether they --

19 MR. SEXTON: Why do they not get the

20 medical?

21 MR. SPECTER: Why?

22 MR. SEXTON: Yes, sir.

23 MR. SPECTER: We have been suggesting that

24 they do for years, something that would be more --

25 MR. SEXTON: You may want to tell me. We

1 are at the bottom of everything. We are considered
2 the bottom of everything. We give them the medical
3 charts; we give them medical reports.

4 MR. SPECTER: In fact, we had to get a
5 court order for them to get even a summary of the
6 medications that the prisons were on, from the jail
7 to the prison. Big problem.

8 MR. MCFARLAND: Does that comport with
9 your understanding, Lieutenant?

10 MR. ALVEY: I couldn't tell you exactly
11 what we provide. I know we provide some
12 information.

13 MR. SPECTER: It differs by county.

14 MR. MCFARLAND: Mr. Gennaco, do you know
15 what L.A. County, the sheriff, provides to CDCR?

16 MR. GENNACO: I think it is as Don
17 suggested, a summary of the medical history. I do
18 think that if there are -- my understanding is if
19 there have been issues in the jail that the state

20 authority ought to know about it with regard to
21 either violence or acting out behavior on behalf of
22 inmates, that will be provided.

23 MR. SEXTON: Would that kind of
24 information help reduce the violence between the
25 county jail and the state prison?

1 MR. GENNACO: Absolutely. I think that
2 agencies always can do a better job of talking to
3 each other and informing people ahead of time. So
4 whatever you learned in one experience with an
5 inmate can be translated as that inmate moves to
6 another housing facility. Even in Los Angeles
7 County that is sometimes difficult where somebody is
8 moving from central jail up to one in the north
9 facility. Sometimes information, unless written
10 down, even sometimes when written down, isn't
11 translated to the new people now responsible for
12 custody and security of that inmate.

13 MR. MCFARLAND: In the summary that L.A.
14 County provides CDCR, would that include a matter of
15 practical -- an allegation of substantiated or
16 otherwise of sexual assault by that prisoner?

17 MR. GENNACO: I am not sure, but I would
18 be skeptical that it would.

19 MR. MCFARLAND: Why is that? Why wouldn't

20 that be germane to CDCR?

21 MR. GENNACO: It is a good question. As I

22 said, principles of just good police work would

23 suggest that information should be provided and

24 accepted.

25 MR. SEXTON: Would a consideration

1 possibly against it -- I am just trying -- on any
2 given day you're probably moving several hundred. I
3 am assuming that by the time you try to chase down
4 medical records, make copies, so on and so forth,
5 that may be their rhyme or reason.

6 MR. GENNACO: It could be an inhibitor. I
7 think that would be an argument that might be
8 articulated. One thing that may end up being
9 helpful, has been helpful in the county jail with
10 regard to the medical information being available at
11 different facilities, is county jail has moved, is
12 moving if not has moved, to a paperless sort of
13 medical history way of documenting, medical history
14 electronically. It is much more easy to transfer
15 that information from facility to facility than it
16 used to be when the paper would often never follow
17 the inmate when he was put into a new assignment or
18 if it followed, it would be days before it would get
19 there.

20 MR. SEXTON: If DOC is in a position to be

21 able to receive that information?

22 MR. SPECTER: Absolutely not.

23 MR. SEXTON: That would be the next

24 question.

25 Mr. Gennaco --

1 MR. GENNACO: But they could.

2 MR. SPECTER: We hope they would.

3 MR. SEXTON: I understand that.

4 Next time somebody knocks Alabama, I may have
5 to point out this way.

6 Los Angeles, as I understand, also took a lead
7 in mental health facility, as you talk about mental
8 health. I have toured your mental health facility.
9 Could you talk some about that and if that has
10 reduced violence in the facilities?

11 MR. GENNACO: It's interesting that you
12 ask me about that since we just had a death in one
13 of the mental health dormitories, as a result of an
14 inmate murder last week.

15 MR. SEXTON: I don't read the papers.

16 MR. GENNACO: That being said, I would say
17 a few things. One is the Twin Towers facility is a
18 very modern facility, and, as I think health care
19 goes, mental health care goes in a jail facility, it

20 is probably one of the better ones. It is
21 unfortunate that in the United States it happens to
22 be the largest mental health care institutionalized
23 facility in the country. It is a jail.

24 That also being said, I do think that in
25 comparison to other mental health jails or prisons

1 that I am aware of it probably stands out as being
2 one of the better ones as far as providing a good
3 level of mental health care. It does have
4 challenges. One of the challenges, for example,
5 that I think the mental health professionals and
6 deputies in that facility face every day is that
7 they have to make an arbitrary figure, they have a
8 hundred beds for one type of mental inmate who needs
9 some sort of mental health care. They will always
10 have 100 beds. So they fill the 100 beds with
11 inmates who are there right now, who they think are
12 the most in need of this kind of intense mental
13 health treatment. The hundred and first inmate
14 comes into the facility who is worse than those
15 hundred, so number 100 has to go somewhere else.
16 That is always a continual problem because of the
17 fact there is no maneuverability because of the
18 population that should allow empty beds. So the
19 principal decision could be made. The decisions are

20 made on what we have available right now.

21 MR. SEXTON: I understand the bubble. Has
22 it helped reduce your prison rape situation,
23 especially with those mentally impaired?

24 MR. GENNACO: I think that segregating out
25 those that are deserving and need of mental health

1 is probably causing a reduction in a number of ways.
2 One is it provides a level of mental health care
3 that will reduce the likelihood of assailants
4 assailing, and I also think having mental health
5 care professionals in the jails and working with
6 these inmates provides reporting mechanisms that
7 otherwise wouldn't exist with regard to actual
8 incidents.

9 MR. MCFARLAND: Do you have such
10 counselors, mental health counselors?

11 MR. GENNACO: In the jail, the Department
12 of Mental Health has a number of personnel on staff
13 at any particular time.

14 MR. MCFARLAND: Lt. Alvey, do you have
15 mental health counselors at your facilities?

16 MR. GENNACO: We have a housing unit
17 called Behavior Health Unit. Our criminal justice
18 mental health personnel staff it. They treat
19 inmates that are housed there.

20 MR. SEXTON: That type is required by ACA

21 accreditation; that is required?

22 MR. ALVEY: Yes. We do have a facility

23 out of jail where we take acute inmates.

24 MS. ELLIS: Mr. Specter.

25 MR. SPECTER: Yes, ma'am.

1 MR. ELLIS: Certainly for both of you, you
2 both talked about culture changing attitudes, talked
3 about insensitivity.

4 Mr. Gennaco, you talked also about the outside
5 community. I am wondering if you could comment and
6 talk a little bit about perceptions that people have
7 regarding how inmates are held in low esteem by
8 prison personnel. I know that it's difficult to
9 change attitudes, and I'm just throwing out there
10 may be perceptions. Would both of you comment a
11 little bit on that subject?

12 MR. SPECTER: Sure. Before I do, I don't
13 -- I want to make sure that my comments are not
14 taken the wrong way. There are 35,000 staff members
15 working --

16 MS. STILL: 56,000.

17 MR. SPECTER: We will take your word.

18 MS. STILL: I swore before I talked.

19 MS. ELLIS: Exactly.

20 MR. SPECTER: There are 56,000 officers,
21 including some sitting behind me, and not all of
22 them act in the same way. Just like I like to say
23 the prisoners are a microcosm of the community, and
24 so are the staff. But, in general, we have seen the
25 range of -- a wide range of unacceptable behavior by

1 officers in terms of treatment of prisoners. Some
2 of them are very respectful of prisoners and talk to
3 them and treat them like human beings. Others treat
4 them like numbers. Others still believe that they
5 are part of the punishment that is going to occur
6 when the prisoner is incarcerated. And it is their
7 job to make life miserable for the prisoner while he
8 is incarcerated, which, of course, is not the law.
9 And it is very difficult and it is also very much of
10 a cop kind of mentality they give themselves, view
11 themselves as cop against the bad guys.

12 And there has been some effort by one of the
13 former secretaries of the department to kind of get
14 over the notion that they are prisoners, but they
15 are always our clients/customers/patients. Like
16 when you think about it, the prison officials and
17 officers are there to provide services to prisoners.
18 They are to provide them food, clothing, keep them
19 safe. And to get officers to think of the prisoners

20 in that way has not really been successful. Met
21 with a lot of resistance, which tells you a lot
22 about what the culture is there. And the problem of
23 sexual abuse that occurs, the problem of taunting
24 people of their sexual orientation because they have
25 been subject of sexual abuse because they are

1 mentally ill is something that in any kind of
2 correctional system also has to be guarded against
3 and continually works out because it's always going
4 to be present.

5 In California they have no capacity to really
6 do that. There is a very short training period and
7 then they go through the academy and then the new
8 recruits are immersed in whatever culture that
9 exists at that time. That is one of the main areas
10 of opportunity which hasn't been utilized as to
11 really train the heck out of these people before
12 they --

13 MR. MCFARLAND: Mr. Specter, has your
14 organization had a chance or been authorized to have
15 an opportunity to review any of the implementation
16 materials for either state or federal PREA statute?

17 MR. SPECTER: You know, they don't ask our
18 opinion of anything unless the court makes them do
19 that. Even then it's touch and go. So the answer

20 is no. Although we have actually sent former
21 director or secretary of the state responses in that
22 case that I mentioned about the women who was
23 sexually assaulted a long letter with a lot of
24 material explaining what we think needs to be done
25 to prevent that. We, of course, got no response.

1 MS. ELLIS: Would you like to comment on
2 that?

3 MR. GENNACO: I won't repeat what
4 Mr. Specter said. Just to give you maybe a little
5 bit of different perspective. I agree that I also
6 don't want anything that I say taken out of context.
7 The vast majority of people for Los Angeles County
8 Sheriff's Department are good will and are there for
9 good reasons and doing a good job every day. That
10 being said, so long as law enforcement agencies have
11 to hire from the human race, you are going to have
12 issues with some particular employees.

13 The other thing that I think compounds the
14 situation at central jail is that the environment in
15 which the deputies work, in which the inmates are
16 housed is a dismal environment for both, and is an
17 unsafe environment for both. And I think because of
18 that that impacts the dynamics and relationship
19 between staff and inmates because it is so dismal

20 because it is so antiquated and because it is very
21 difficult to do your job and feel safe while you are
22 doing your job and because hundreds, if not
23 thousands, of weapons are recovered, handmade
24 weapons are recovered on an annual basis from the
25 jails in the inmate housing areas, and because

1 inmates have the ability not only to commit violence
2 but to manufacture alcohol pretty much at will,
3 which also exacerbates the violence and
4 decision-making by inmates.

5 All of those reasons, I think, contribute to
6 what might not be the best or optimum relationship
7 between the staff and inmates. They are all in a
8 bad situation is what I'm trying to say. One thing
9 that can help is to increase the level of
10 supervision, and the more supervision you have in
11 this environment by sergeants and people who are
12 walking the floor ensuring the deputies are doing
13 the job, the better off you are going to be.

14 The second thing that the Department is doing
15 more of, and I think as a result of some of our
16 urging, is not only to look at policy violations
17 that are willful, because those are the vast
18 majority of them, but also to look at policies and
19 violations that involve negligent behavior. People

20 that are asleep at the switch. People not doing the
21 jobs. People saying they are doing row checks and
22 they are not doing that. Falsifying records. That
23 kind of inquiry needs to be done on a regular basis
24 so that the jail can continue to be performing at a
25 professional level, and that is also important.

1 MS. ELLIS: Thank you.

2 Mr. Alvey, are there individuals working in
3 the prison system, perhaps guards, who themselves
4 may be members of the LGBT community or population?

5 MR. ALVEY: LGBT?

6 MR. MCFARLAND: Lesbian, gay, bisexual,
7 transgender.

8 MR. ALVEY: Yes, absolutely I have some of
9 them working for me.

10 MR. ELLIS: Are these helpful in making
11 suggestions or being somewhat supportive to the
12 special needs that that individual inmate may have?

13 MR. ALVEY: I haven't seen that. I have
14 seen them professional. They do the job that they
15 are supposed to do. They may be more understanding
16 of some needs than most other people, but I haven't
17 seen anything special, no.

18 MR. ELLIS: Would there be any reason or
19 have you ever observed or become aware that perhaps

20 inmates of that common population might gravitate

21 towards those individuals?

22 MR. ALVEY: I would say, no. Mostly

23 because they are not open about it. Most of them

24 just come to work, do their job.

25 MR. ELLIS: Thank you.

20 brought against one of the prisons where there was a
21 lot of guard brutality, the judge found that
22 investigative process at that prison was, quote, a
23 farce and a sham. And it was like that because
24 nobody had paid attention to it, no outside agency
25 had paid attention to it for many years, and there

1 was lack of external oversight.

2 I believe that unless there is continual and
3 constant external oversight in-house investigations
4 will fall down to their natural level.

5 MR. GENNACO: I am an advocate of the
6 pairing that occurs in Los Angeles County regarding
7 internal investigations of staff. And what I like
8 is to have Internal Affairs investigators do
9 investigative work, but on day-to-day work we are
10 monitoring, overseeing its investigation as a help
11 to shape those investigations, to make sure that the
12 work that is being done by Internal Affairs is a
13 thorough and fair objective product in which all
14 leads will be pursued, and before that investigation
15 moves onto the decision maker we review it to make
16 sure that it meets our criteria. And I think the
17 advantage of doing that and instead of totally
18 farming that out to an outside group, Internal
19 Affairs people have worked the jails. They know the

20 system. They know where the bodies are buried, if
21 you will. Not to make a pun of it. But they know
22 the ins and outs of deputy behavior. That expertise
23 is helpful to us in getting to the bottom of what
24 happened.

25 I agree with Don that you need a check from an

1 oversight group that doesn't have any investment in
2 how the conclusion or decision is going to be
3 reached to help ensure that it is a principal
4 investigation and a thorough investigation and as
5 well as a decision-making at the administrative end.
6 That needs to have some participation from outside
7 voices as well in order to do that.

8 The other thing it does is, even if you assume
9 that law enforcement agencies have the purest heart
10 and is doing the best it can with regard to these
11 internal investigations, there are going to be
12 members of the community, including the inmate
13 community, that if it is just left to them, they are
14 not going to believe it. So some of it has to do
15 with confidence in the investigation, and I think
16 you increase the confidence in that community if
17 there is an outside participant in these
18 investigations.

19 MR. SEXTON: Any question, if you were, I

20 guess, sitting here, would one of your
21 considerations be outside, there are not many LASOs
22 in the country and there are not many Lee Baccha's
23 in the country. Would it be advantageous to discuss
24 for us outside review? I can understand clearly
25 your consideration in a jail, to take a street

1 officer and put him in a jail environment, he would
2 be totally lost. Another sheriff's office to
3 investigate that or somebody that has an expertise.
4 But my question comes up as I listen to testimony
5 and that very few sexual assaults are taking place
6 in our jails. Then we have, or prison, where we
7 have folks that are investigating sexual assaults
8 that actually is an expertise in itself. As I am
9 listening to this, I am curious to know having folks
10 with sexual or rape investigative experience
11 actually investigate a sexual crime versus somebody,
12 that I am hearing, not many occur, do they have
13 expertise in-house to do so.

14 My question: Is this something we ought to
15 consider, outside investigations?

16 MR. GENNACO: I would say, yes, consider
17 it.

18 MR. MCFARLAND: Lt. Alvey, could we get a
19 copy of the Policy and Procedures 13.07, sexual

20 assault protocol for victims?

21 MR. ALVEY: It's in the binder.

22 MR. SEXTON: That is one of ACA standards.

23 It's the last one.

24 MR. MCFARLAND: It is. Thank you.

25 Lt. Alvey, are your personnel union members?

1 MR. ALVEY: Yes, they are.

2 MR. MCFARLAND: Is that the CCPOIT?

3 MR. ALVEY: No, we are local Deputy
4 Sheriff's Association.

5 MR. MCFARLAND: In looking at Policy and
6 Procedures 13.07, Section (B)(12) says: after the
7 victim returns from the rape kit, isolate the inmate
8 until classification arrangements for housing be
9 assigned, either in protective custody or another
10 housing be arranged.

11 Would that include -- would another housing
12 area include ad seg or no?

13 MR. ALVEY: We would try not to house him
14 in ad seg. Ad seg is not a very desirable place.
15 The person, the victim, didn't put themselves in the
16 situation, so it would be punishing the victim.

17 MR. MCFARLAND: Where does the alleged
18 assailant get housed after?

19 MR. ALVEY: Probably ad seg, most

20 assuredly.

21 MR. MCFARLAND: Where would that be

22 indicated in the policy?

23 MR. ALVEY: That is not in that. There is

24 victim policy.

25 MR. MCFARLAND: There is a Section C,

1 assuring the assailant, would it not address what
2 would happen to the assailant, Page 3 of 6?

3 MR. ALVEY: No. That is not going to
4 address that. There is a reclassification section
5 policy also attached in the folder. Probably in
6 that. The inmate would be moved, isolated from
7 other inmates.

8 MR. MCFARLAND: Are they routinely
9 prosecuting criminally?

10 MR. ALVEY: We submit everyone for
11 consideration for prosecution regardless of the
12 victim's desire.

13 MR. MCFARLAND: We've heard a lot of
14 witnesses that DAs were in the past less than --
15 they didn't always prosecute. What has been your
16 experience?

17 MR. ALVEY: Given the short notice, I
18 wasn't able to follow up on the statistics. I did
19 get some statistics. I know we sent everyone to the

20 District Attorney's office. Our investigation unit,
21 our patrol section investigates all sexual assaults.
22 So I would be willing to venture everyone was
23 charged. I can get the statistics.

24 MR. MCFARLAND: If possible, that would be
25 helpful if you can supply that to us, just the

1 percentage of charged and percentage of convictions.

2 I imagine the charges would be dropped.

3 MR. SEXTON: Mr. Specter, in your
4 knowledge, statewide cases of violence taken, not
5 only sexual violence, those other types of violence
6 brought before District Attorneys for prosecution,
7 are they followed up on?

8 MR. SPECTER: I think -- well, I am sure
9 that all felonies are referred to the District
10 Attorneys for prosecution. Historically, very few
11 are prosecuted. Many of them are not charged, what
12 they call administrative reasons. Serious, but that
13 is not to say there are not criminal charges
14 brought. There are criminal charges brought, but
15 the vast majority are not prosecuted.

16 MR. SEXTON: In your opinion, why not?

17 MR. SPECTER: A lot of them involve
18 relatively minor, like if you touch -- if you are a
19 prisoner and you hit a correctional officer or touch

20 him or something or battery on another prisoner,

21 that is a felony.

22 MR. SEXTON: How about if we go up on the

23 same balance, same rationale of sexual assault,

24 would they be prosecuted?

25 MR. SPECTER: That I don't know. You

1 would have to ask somebody from the Department on
2 that. The more serious, they get murders and things
3 prosecuted.

4 MR. SEXTON: Thank you.

5 MR. MCFARLAND: Mr. Specter, have you had
6 any experience with any conflict between a officer's
7 duty to immediately report a sexual assault and a
8 privileged communication to a mental health officer
9 or medical personnel?

10 MR. SPECTER: We have had -- there has
11 been an issue about what the mental health official
12 reports, because they have sort of a dual obligation
13 to both the patient and the employer, and to report
14 any criminal acts. And as a matter of fact, I can
15 forward this to you. I have read it, but just in
16 the last week or so. We got a new policy by the
17 CDCR, how they are going to treat confidentiality,
18 how they are going to treat those concerns.

19 I would be happy to share it with you if it is

20 public. But I haven't read it yet.

21 MR. MCFARLAND: Is that public?

22 MS. HARDY: First I heard of it.

23 MR. SPECTER: It is a big organization.

24 MR. DOVEY: It is internal at this point.

25 We don't have any problem sharing it with you.

1 MR. MCFARLAND: Thank you. How is it
2 titled so we know it when we see it?

3 MR. DOVEY: The last time I saw it was a
4 month ago, working its way through. It was in the
5 form of a memorandum and policy discussion. I am
6 not sure how it looks today, to be honest with you.
7 But we will get it to you. Or do you have it, Don?

8 MR. SPECTER: I have it in an E-mail. I
9 can send it to them.

10 MR. MCFARLAND: Thank you.

11 MR. SEXTON: The only question I have,
12 does Mr. Dovey have E-mail? We don't have E-mail in
13 Alabama. We got plumbing last week.

14 MR. SPECTER: How many prisoners do you
15 have in Alabama?

16 MR. SEXTON: 23,000. L.A. County is as
17 big as our state.

18 MR. MCFARLAND: The Sheriff is not
19 sworn.

20 MR. SPECTER: He is the Sheriff; I believe

21 anything he says.

22 MR. GENNACO: If I may address something,

23 involves privacy and privilege issues, which I think

24 is a disconnect and is a struggle and obstacle in

25 our work in L.A. County on jail violence in

1 particular, and that is federal legislation called
2 HIPA. There is a state equivalent.

3 MR. MCFARLAND: H-I-P-A?

4 MR. GENNACO: H-I-P-A. HIPA provides
5 privacy protection for medical records of inmates.
6 There is an exception for criminal investigations.
7 There is no exception for Internal Affairs
8 investigations. So if we want to do an Internal
9 Affairs investigation against staff, there are
10 obstacles in getting access to that medical
11 information. That is important to do sometimes in
12 those investigations. And there is no exception in
13 the law, either in California state law or federal
14 law, for Internal Affairs investigations.

15 MR. MCFARLAND: Thank you. That is all.

16 I want to thank each of you for both your
17 written and verbal testimony. Very helpful. And we
18 are adjourned for lunch until 2:00. Panel 7 will
19 start at 2:00.

20 Thank you very much.

21 (Panel 6 concluded at 12:25 p.m.)

22 (Luncheon break taken.)

23 ---oOo---

24

25

1

PANEL 7

2

---oOo---

3

MR. MCFARLAND: Good afternoon. Hope you

4

all had a good lunch. Thanks to the CDCR for the

5

catered lunch.

6

Our next panel will begin with Dr. Terry

7

Kupers who needs to leave right at 3:00. We will

8

hear his opening remarks and then direct any

9

questions that we have particularly for him, and

10

then hear from the others. And if you are still

11

around at that point, you can chime in on any

12

questions that we might direct to them, too.

13

Pleasure to have you here, Doctor.

14

DR. KUPERS: Pleasure and honor to be

15

here.

16

MR. MCFARLAND: Oh, we have to swear you

17

in.

18

(Oath administered by Mr. McFarland.)

19

DR. KUPERS: It is a pleasure and honor to

20 be here with you. I apologize in advance I have to

21 leave at three. My time kept getting pushed back.

22 I have patients back in Oakland.

23 I am a psychiatrist. I did turn in some

24 written comments, and Mr. McFarland finally did

25 write me some very apt questions which I have

1 answered in the written testimony and will comment
2 briefly about here, and I hope to leave us some time
3 for discussion.

4 I do general psychiatry, and I am a professor
5 at The Wright Institute. I got roped into
6 testifying in court about jail and prison conditions
7 in 1974, actually in L.A. County, in the Rutherford
8 case, talking about how crowding impacted the mental
9 health services, the adequacy of mental health
10 services, rape in the jail and that kind of thing.

11 I then went on from one case to another. So
12 it's been a sidelight of my career. I've never
13 worked in corrections. However, I testified in over
14 30 large class action lawsuits. I have consulted to
15 the Civil Rights Division of the Department of
16 Justice, consulted to Amnesty International Human
17 Rights Watch. I am a contributing editor for
18 Correctional Mental Health Report, and I have
19 written extensively, including a book, Prison

20 Madness, which is a mental health crisis behind

21 bars.

22 The basis for my expertise in this area is,

23 first of all, I had a number of cases specifically

24 about sexual assault. In women's prisons it's

25 tended to be custodial misconduct. In men's prisons

1 it's tended to be prisoner on prisoner. I had two
2 rather high profile cases where a staff sexually
3 assaulting female prisoners.

4 But that isn't really the basis of much of my
5 expertise. The real basis is that interviewed
6 thousands and thousands of prisoners around the
7 country because I get asked for opinions in
8 litigation or I get asked to step in as a consultant
9 to help a case after litigation has commenced. And
10 in the process I interview lots and lots of
11 prisoners, and I feel very privileged to do that.
12 Because, for the most part, as you know, people on
13 the outside don't know much what goes on in prison,
14 so I have in-depth interviews with lots and lots of
15 prisoners. They tend to be people with serious
16 mental illness and very shockingly high proportion
17 of them have been sexually assaulted which is what I
18 testified when I talked to the Parole PREA
19 Commission.

20 MR. SEXTON: Previous to their attendance

21 in prisons?

22 DR. KUPERS: No, after, in jail or prison,

23 but previous to my interview with them.

24 And so I hear about a lot of unreported sexual

25 assault and rape, and that is actually the bulk of

1 my experience. That far outweighs the overt cases I
2 testified in.

3 I started my written comments, and I will
4 repeat it here, mentioning someone I saw the week
5 before I wrote this, now two weeks ago. He is a
6 very tough prisoner in another state who was being
7 tried for murder because he killed another prisoner
8 and the other prisoner attacked him. This is a
9 maximum security prisoner who can be attacked by a
10 very rough actual gang member who had a deadly
11 weapon and he killed him in a hand-to-hand combat.

12 When I was talking to him, after a few hours
13 of talking with him -- that is a significant fact in
14 itself -- told me and broke down in tears crying
15 that he had been raped and he had been attacked in
16 his cell by three men wearing masks, other
17 prisoners. To this day he doesn't know who did it.
18 He never reported this, but it certainly changed his
19 life in prison. And it is after that rape that he

20 went and got himself a shank.

21 Having made that comment, I want to reiterate
22 what I said in writing, for the most people who have
23 been -- survived sexual assault and rape in prison,
24 they are not dangerous people. They tend to stay to
25 themselves. In fact, their symptoms psychiatrically

1 tend to be on the depressive side. They either have
2 intrusive symptoms, like nightmares and flashbacks
3 or they fall into a very deep depression where they
4 isolate themselves. That is the majority of people
5 I have seen who survive prison rape.

6 However, there are cases and some of them have
7 been very high profile. People have turned to
8 extreme violence in reaction to having been so
9 brutally assaulted and raped.

10 Conditions, of course, are very important,
11 crowding in California where unprecedented level of
12 crowding. I testified in a number of cases that
13 were about the ill effects of prison crowding. And
14 we know for sure that violence, psychiatric
15 breakdown and suicide all rise precipitously with
16 crowding. We are now very crowded in California and
17 around the country. Some states are crowded. Some
18 states are renting beds.

19 What happens with crowding is all forms of

20 violence and mental illness rise, and among the
21 violent incidence are a number of sexual assaults.
22 People with serious mental illness are especially
23 prone to sexual assault. There are many reasons for
24 that. One of the reasons is they tend not to have a
25 lot of social skills, and in prison if you want to

1 rape or sexually assault someone, you want to
2 assault someone who doesn't have friends. You can
3 be retaliated against.

4 I mention in the report a study that was just
5 released in September by the federal Bureau of
6 Justice statistics, which has shockingly high
7 prevalence rates for serious mental illness. The
8 study, I will caution you in advance that I really
9 recommend reading it, is about reported symptoms,
10 not about diagnosis by clinicians. Those two
11 figures are slightly different, but not large, not a
12 large difference. But the figures come out over 50
13 percent, really, on average of prisoners suffering
14 from serious mental illness. The other thing the
15 study goes into is these prisoners with serious
16 mental illness are more than twice as likely to be
17 attacked in correctional settings, which I think is
18 an unprecedented study and backs up what I have been
19 finding in my interviews, which is people with

20 mental illness tend to be the victims of various
21 violent crimes, including rape.

22 So in terms of what to do to prevent prison
23 rape and sexual assault, I will just be attending to
24 the unmet treatment needs of people with serious
25 mental illness which would be very important,

1 including providing them a safe place.

2 Staff training is a thorny issue. I will
3 mention it quickly now. We can talk about it more.
4 There are trainings and there are trainings. We
5 have learned this in the workplace with sexual
6 harassment. One of the best legal defenses for a
7 public agency or corporation in terms of sexual
8 harassment litigation is to do staff training. So
9 that they can then say if sued, "We did our best.
10 This individual did what he did, but we did a
11 training for the staff."

12 People who do those trainings, and I have done
13 a few, but I don't do a lot of them, tell me that
14 the most important thing about those trainings is to
15 get people engaged. So you have these sort of
16 sitting in the back of the room with arms crossed
17 phenomena. The trainers go into a police department
18 or fire department where there is an accusation of
19 race discrimination or sexual harassment, attacks on

20 gay or lesbian workers, and you walk into a room,
21 and it is an involuntary situation. The trainer is
22 being asked in and the workers are required to go.
23 And there will be a bunch of men, usually, sitting
24 in the back of the room with arms crossed, and the
25 trainers tell me that the trick is to get those guys

1 involved in the training. They have tricks on how
2 to do that.

3 What I went to recommend about training is
4 that it is not just about scratching the surface;
5 that training has to be about deep issues that lie
6 behind sexual assault. For instance, misogyny,
7 homophobia, racism. In order to do training with
8 staff around those issues, and I say staff because
9 whether the perpetrator of sexual assault is a
10 prisoner or a staff member, the staff are very
11 involved. And if the staff can improve on
12 attitudes, that will make the incidence of sexual
13 assault go down. So there needs to be training that
14 isn't just scratching the surface, where they really
15 get to the people being trained and talk how it
16 feels to be the object of sexual gender choice or
17 rational discrimination. And that can be done. We
18 know how to do that. We have trainers in the
19 community. I know in the California Department of

20 Corrections and Rehabilitation is consulting some of
21 those trainers. National Institute of Corrections
22 does that. And I would just emphasize whatever the
23 expertise in the area, if we are training about
24 relations with homosexual, gay, lesbian,
25 transgender, bisexual people, there is an expertise

1 in the community about that. That should be brought
2 into the correctional training situation.

3 I mentioned a case that I testified in. I can
4 mention the name. I've checked with the attorneys
5 in the case. That is the Roderick Johnson case in
6 Texas. I really recommend that you become familiar
7 with that case. I testified in that case for two
8 days. Roderick Johnson was, is a black gay man who
9 was made into the sex slave of gangs in the Texas
10 prisons. Very high profile case. While this was
11 going on, he was spending a year and a half in a
12 prison, very tough prison where there were a lot of
13 gangs.

14 He went to the classification committee six
15 times requesting to be put in protective custody.
16 They denied him. According to testimony in the
17 case, other prisoners testified and supported his
18 testimony. He was laughed at in those
19 classification hearings. He was told, "You have to

20 go get yourself a man" and he was told other very
21 degrading things in those classification hearings.

22 And what we do know on the record is, of
23 course, those degrading things are not recorded. We
24 know that he was denied safekeeping. And by
25 testimony in court and subsequent research it is

1 clear that all of this did happen, that he was
2 brutally sexually attackd over and over again and
3 made into a sex slave, and the staff and authorities
4 did nothing to help him.

5 Now Texas is cleaning up their act. There are
6 changes in the Texas Department of Criminal Justice.
7 But his case illustrates how complicity of the staff
8 is required in what seems to be prisoner-on-prisoner
9 rape. And I have seen it happen in terms of staff
10 assigning two people to a cell where one is a known
11 rapist, and they do that to punish the one who is
12 not. So that what they are basically doing is
13 punishing someone with rape that the staff set up by
14 where they assign people. Various situations like
15 that. There are various permutations.

16 Mr. McFarland asked me about the standards. I
17 testified before PREA about standards. I think I
18 made a mistake when I testified before PREA, and
19 that is there are no explicit standards written out

20 as one, two, three, these are the steps you take.
21 However, what I believe is -- and there is a
22 consensus among experts in the field, it's reflected
23 in the National Institute of Corrections' documents.
24 It is reflected in the L.A. County protocol you
25 discussed this morning. It's reflected in the Human

1 Rights Watch reports. I mentioned two of them. The
2 one about women sexual assault and the one about
3 men.

4 There are standards. There is consensus in
5 the field, and probably we will need a more explicit
6 standard in what confidentiality means, what
7 protects means, what it means not to put someone in
8 segregation after reporting being sexually
9 assaulted.

10 The largest issue, as far as I am concerned,
11 in prisons is respect. That is where the staff
12 respect the prisoners as fellow human beings. They
13 are doing time. They are human beings, and they
14 deserve respect. Those with mental illness deserve
15 treatment for their condition. Those who are
16 sexually assaulted deserve a respectful response on
17 the part of staff. Where that attitude is in place,
18 then the problem is much less. And I think a zero
19 tolerance attitude on the part of the administration

20 and staff is really a major way to cut down on
21 prison sexual assault.

22 In that regard I was asked to comment about
23 officers unions, and I sadly have some negative to
24 say about that. That is that I think that blind
25 loyalty among the troops, that is the blue code or

1 the failure of officers to report others who are
2 perpetrators of crimes is absolutely unacceptable
3 and abhorrent, and it has been the practice of the
4 California Correctional Police Officers Association;
5 that is, at anytime when their members are on trial
6 for alleged sexual assault, they throw total support
7 behind the defendant's case or their own members
8 rather than doing some kind of neutral investigation
9 to determine whether there is any validity to the
10 allegations, and, if so, then they should be the
11 first ones to say this is not proper conduct.

12 I want to say a few things about
13 classification, and I know that you have been
14 talking about classification a lot. I am not an
15 expert on classification, technically, but as an
16 expert on mental health and psychiatric services I
17 learned a lot about classification.

18 First of all, classification is entirely
19 related to the issue of reporting and the issue of

20 retaliation. It is interesting when the lieutenant
21 this morning spoke, he said the incidence of
22 homosexuality in his jail, and I believe he is from
23 Orange County, is 2 percent. We know that is way
24 low. We know that more than 2 percent of people
25 entering jail are gay because of national

1 statistics.

2 Why are gay and lesbian people underreporting
3 their sexual preference? It has to do with what
4 happens to them if they report it. They are put in
5 either protection, which is no easy ride in jail or
6 prison, or they are put in segregation. It must be
7 at least 8 percent of the population is failing to
8 report their gender orientation. They are afraid of
9 the consequences. That is much more so in regard to
10 sexual assault.

11 The word in the jails and prisons is if you
12 are afraid of retaliation by a perpetrator of
13 prisoner-on-prisoner rape and that perpetrator is
14 well connected, meaning gang or just having friends
15 or just being a senior ranking prisoner, they can
16 get to you anywhere in the system, including
17 protection. I have seen this over and over.
18 Classification breaks down, and where classification
19 breaks down sexual assault happens. Generally, on

20 average, and this is different in each system,
21 protection is not classified. That is, protection
22 is a category, protective custody of safekeeping,
23 whatever level of protection there is. So one is
24 placed in that category and that is where they sink
25 or swim.

1 Now if an individual is in a gang and
2 snitches, you are familiar with that term, and the
3 gang outs him, there is a contract on his head, and
4 he asks for protection, he is going to be put in the
5 same protection unit on average as the pedophile,
6 the police officer and the survivor of a prison
7 rape. Those people are all going to end up in
8 protection together. There is going to be no
9 classification in protection. So what I have been
10 asked to do in several occasions is to testify in a
11 case where a rape happened inside protective custody
12 and the perpetrator was a gang member and the victim
13 usually people who are vulnerable to rape and sexual
14 assault or low level offenders. They are not very
15 savvy about crime in the streets and such or they
16 are in for drug charges or minor charges, and they
17 may be in, as we were talking about this morning,
18 with lifers or people who are much more hardened,
19 just vulnerable to sexual assault.

20 So classification needs to attend to that. So
21 there needs to be a classification system where
22 protection can be granted to the degree.

23 MR. SEXTON: We keep hearing the same
24 thing over and over. What is the solution? Do we
25 not -- how much time do we spend saying, "Don't come

1 to jail"? How do we solve this problem that you and
2 everybody else is -- I think we are on the seventh
3 panel. Everybody is saying the same thing. What is
4 the solution? You, Doctor, tell us.

5 DR. KUPERS: Well, there has to be a
6 wraparound solution. The classification system that
7 exists breaks down with crowding and not enough time
8 is spent. As you heard this morning, if there is an
9 empty bed, someone is going to be placed in it. We
10 need to stop that practice. The reason to stop it
11 is because rapes occur and murders occur.

12 So classification needs to be taken more
13 seriously. Where it is a problem of insufficient
14 staffing, given the crowd of prisoners, then that
15 situation has to be ameliorated.

16 MR. SEXTON: Corrections and the sheriff's
17 office doesn't get to answer that. That comes from
18 the budgetary commission, comes from the
19 Legislature, whatever. I can be honest with you.

20 They don't care.

21 There is many folks out there, throw them in

22 and throw away the key. There is a lot of folks

23 that have that mentality. But my question is:

24 Given what we have, how do you fix the problem? And

25 the other question is: Eight percent, where is that

1 figure coming from?

2 DR. KUPERS: Ten percent of the population
3 is homosexual.

4 MR. SEXTON: You are quoting a statistic.
5 Where does that come from?

6 DR. KUPERS: All of the literature. I
7 can't cite you a specific source off the top of my
8 head. That is generally what is the prevalence in
9 the population; 10 percent of population is gay.

10 MR. SEXTON: The bad news is the
11 population is going up. We are seeing an increase
12 in violent crimes in middle and larger cities. How
13 do we solve the problem? That's what we are here
14 for. How would you recommend solving the problem?

15 DR. KUPERS: Im going to respectfully
16 agree and disagree. I agree it's not the sheriff's
17 fault or the California Department of Corrections
18 fault. It is the Legislature's and the public, and
19 it is about priorities.

20 Where I disagree with you is the existence of
21 this panel, for instance, comes out legislation, and
22 it is possible to change the situation. I think our
23 sentencing policies need to be looked at. In
24 California currently a significant number of women
25 are going to do alternative incarceration for minor

1 offenses. That can be looked at. That will reduce
2 the population.

3 Unless we reduce the population, the problem
4 isn't going to be solved. That doesn't mean we
5 shouldn't talk about the details of solving the
6 problem. One of the details I am suggesting is
7 classification be more rigorous. For instance,
8 there be classification within protection. So I
9 think that is a step. That you're right, that step
10 alone wouldn't solve the problem.

11 MR. MCFARLAND: I'm sorry, Dr. Kupers. By
12 classification in protection, do you mean
13 classification for everybody in ad seg?

14 DR. KUPERS: No. That is another point I
15 want to make. Protection should not involve the
16 deprivation of any amenities or activities that the
17 person is entitled because of classification level.
18 Otherwise, too often protection means segregation.
19 And the problem with that, besides it is just the

20 inhuman conditions of segregation is that that then
21 causes people not to seek protection because
22 segregation is so toxic for them.

23 So protection needs to be at a comparable
24 level of programming as that individual would have
25 were they not in protection. That is a very

1 important point. Unless you correct that problem,
2 people will not seek protection. Then you are going
3 to have vulnerable people being assaulted.

4 MR. MCFARLAND: What do you mean by
5 classification being more rigorous in protection?

6 DR. KUPERS: Levels of protection, levels
7 of classification inside protection. So, for
8 instance, the outed gang member is not at the same
9 level of classification within protection, is not on
10 the same yard as the individual who has suffered a
11 sexual assault or has filed -- of the police
12 officer.

13 MR. SEXTON: I am somewhat confused. If
14 you have a Level I individual who is assaulted, your
15 first time nonviolent offender, he gets assaulted
16 then. So are you going to move your perpetrator,
17 and you are talking about moving them over to ad
18 seg. Then you are talking about basically returning
19 that individual back to a Level I setting.

20 DR. KUPERS: He should be at the level of
21 custody that his points gain him, independent of
22 protection.

23 MR. SEXTON: You are talking about
24 protective custody at Level I.

25 DR. KUPERS: If that is necessary, yes.

1 Actually, contrary to what we think, intuitively a
2 lot of sexual assaults happen at lower levels in
3 prisons because there is more freedom to that, more
4 dorms.

5 MR. SEXTON: I understand that. I am not
6 aware, right offhand I am not aware of any
7 protective custody at Level I facilities. I am
8 just -- normally what happens, you're returned back
9 to general pop.

10 DR. KUPERS: That's right.

11 MR. SEXTON: Not a protective status.
12 There is not a protective custody in general
13 population.

14 DR. KUPERS: That's right, and I think
15 that's a problem. I agree with you the whole system
16 needs to be looked at. I am not suggesting a one
17 strike correction. There is a lot of people who are
18 assaulted in that situation exactly because there is
19 no protection. It would not be so difficult to

20 restructure classification such that people can be
21 given protection, relative protection. Some people
22 need more than others. Some people can manage if
23 they are just in closer observation in a unit that
24 has more direct observation than another unit.
25 Within any institutions the staff know which units

1 make people more vulnerable and which units give
2 them more supervision.

3 What I'm saying is I don't have a fix-it
4 proposal about this, but it needs to be looked at
5 very closely so that the classification is done
6 carefully. And it is not the case that everyone who
7 asks for protection is lumped together and gets no
8 further consideration as their individual problems
9 dictate.

10 MR. MCFARLAND: Are there other ideas you
11 have for solutions? You mentioned classifying
12 within ad seg, reviewing sentencing policies,
13 reducing population and having programming within
14 protection deck so there is not a disincentive.

15 DR. KUPERS: I want to make one more point
16 that is about consensual sex. I know you hear about
17 this all the time. In order for there to be
18 consensual sex, there needs to be an alternative to
19 having sex. And if an individual who is vulnerable

20 is frightened in a prison and agrees to consensual
21 sex with someone in order to have protection, in my
22 mind that is not consensual sex.

23 There needs to be the things I am
24 recommending. For instance, protection such that
25 consensual sex, if it's legal, can happen.

1 Otherwise there is no consensual sex. What is
2 happening is all the vulnerable prisoners are
3 agreeing to sex in order not to be killed. No, not
4 consensual.

5 In terms of other solutions -- by the way, Mr.
6 Sexton is right, sentencing is not the prerogative
7 of the sheriff or the Department of Corrections.
8 Sentencing needs to be looked at very clearly. We
9 have massive overcrowding in the prison, and that is
10 leading the problem.

11 MR. SEXTON: I don't think there is a
12 state that I am aware that does not have some sort
13 of alternative sentencing commission, community
14 corrections. And I hate to be the one to tell you
15 this, but crime is continuing to go up. The problem
16 -- that is why I am asking first for solutions. I
17 don't foresee this going away. We are headed right
18 back where we were in the late '80s and early '90s
19 with our crime trends.

20 DR. KUPERS: I don't think that's the
21 crime trend. If you look at the differences between
22 states, you will find that the correlations break
23 down. I think the crime rates go up by a point or
24 two. The prison populations go up ten times.

25 MR. SEXTON: You may want to go look at

1 the UCR crime rates this year, and then the most
2 recent studies done by Police Executive Research
3 Foundation on major and medium sized cities to the
4 point now the increase over the past year was the
5 highest that we have seen in 14 years.

6 DR. KUPERS: I would be happy to review
7 with you that information is broken down by states,
8 and what my guess is is that there is no --

9 MR. SEXTON: Just happen to have a copy of
10 it.

11 DR. KUPERS: There is no correlation
12 between the states that are increasing at a higher
13 rate than the states that are not, and the crime
14 rate. Actually, there is many variables mixed into
15 that. There is a very complicated discussion about
16 sentencing and crime rates. My point is, yes,
17 states have diversion programs. They are not
18 sufficiently used such that in California the prison
19 population is growing by leaps and bounds. There is

20 no need that that be the case.

21 That is not the problem of Department of the

22 Corrections and Rehabilitation. That is a state

23 problem. The Legislature needs to look at it. The

24 public needs to look at it. I think that is my

25 list. I think I will stop there.

1 I did mention mental health treatment. I
2 think the work of -- your work and the work of
3 providing adequate mental health care -- mental
4 health care includes housing people in a situation
5 that is safe and where they can receive the care
6 they need. So it involves intensity of mental
7 health care as well as protection in the ways they
8 need protection.

9 MS. ELLIS: Dr. Kupers, one of my
10 contentions is we don't know enough about trauma in
11 our society, whether it's the trauma experience as a
12 result of sexual assault or homicide survival or the
13 impact of crime on robbery victims. We talk about
14 it a lot, but I don't think we really understand it.
15 I would like from your advantage as a psychiatrist
16 to talk briefly about trauma. I know this could
17 take days. I would like for you to give a good
18 solid definition of the social wounds.

19 DR. KUPERS: Of?

20 MR. ELLIS: Trauma, the social wound as we
21 see it in victim services, that it is something that
22 gets beneath that skin where we are not protected.

23 DR. KUPERS: I think I see where you are
24 coming from. And let me just mention that if you
25 study the incidence of past trauma in victims of

1 crime and perpetrators of crime, you will find that
2 the numbers are extremely high. So for instance,
3 people going to prison, the published statistics by
4 the federal Bureau of Justice Statistics is 56
5 percent of women entering prison have been
6 physically or sexually abused in the past. I think
7 that a comparable figure would fit the crime victim
8 group.

9 So what we've got is massive trauma in our
10 society, and it is perpetrated against children,
11 which is the most damaging aspect of it. Within
12 that context, people are doing crimes against each
13 other. Some people are the victims of crime and
14 some people are perpetrators. We need to do
15 something about trauma. It involves poverty. It
16 involves domestic violence. It involves illicit
17 substances. Those problems need to be addressed so
18 people can grow up in a society without the
19 prominence of trauma that we now have. Yes, we have

20 prominence of trauma in victims who are
21 retraumatized by the crime, and we have trauma in
22 the criminals who perpetrate the crimes. We need to
23 attend to the trauma. Because unattended to, the
24 results of trauma in terms of a psychological realm
25 is repeat trauma of one kind or another, either

1 revictimization or becoming a perpetrator in terms
2 of acting out the past trauma. It is a very large
3 problem, a problem in our society.

4 I think there has been more attention to that
5 lately. It is known how many people in prison have
6 a history of trauma. Complex posttraumatic stress
7 disorder is a diagnosis not yet in the DSM, which
8 represents the problem of people who have multiple
9 traumas. And I think that is a very important new
10 angle in psychiatry, and I agree it is a very big
11 problem and we need to pay attention to it.

12 MR. ELLIS: We need a lot of time
13 educating regarding trauma.

14 DR. KUPERS: Absolutely.

15 MS. ELLIS: Let me ask you in terms of
16 race. We have been talking a lot about culture. We
17 have been talking about what goes on inside the
18 walls, so to speak, and I want to ask you to discuss
19 the issue of race in the prisons and also with

20 respect to the impact on society at large because I
21 think we have to remember that originally the
22 legislation regarding PREA that kind of drove this
23 whole idea had a lot to do with information gathered
24 about society and concerns of society from a health
25 standpoint, from a mental health standpoint as well.

1 If you will, would you please address that
2 issue?

3 DR. KUPERS: I would be happy to. I
4 assume I have a very short time because we have two
5 other distinguished speakers.

6 David Thatcher was the Surgeon General
7 under Clinton. He was a colleague of mine at
8 Charles Drew Medical School at the beginning of my
9 career.

10 He placed racism and racial discrimination at
11 the absolute top of the list of public health
12 hazards, not just psychiatry hazards. Race matters
13 quite a bit in terms of suffers from what disease
14 and what treatment they get, whether they fall into
15 poverty or not, et cetera. Certainly race is a
16 pervasive concept in our society and the prison
17 population itself reflects the problem.

18 We have -- just about 50 percent of prisoners
19 are African-American, way beyond their proportion in

20 the community. What I find in prison is that there
21 are racial tensions, and the reason there are racial
22 tensions is because people are frustrated and
23 dissatisfied and angry, and they are going to take
24 it out on someone, across some line, and they will
25 manufacture the line. So the younger people are

1 attacking the older people. The straight ones are
2 attacking the gay ones. And race becomes the most
3 obvious line across which the battles ensue.

4 So when you have crowding, which causes
5 violence, including increased rape, it tends to
6 happen across racial lines. That is where it all
7 breaks down. But I wouldn't say that the race
8 difference is what caused the problem. I would just
9 say that becomes the nidus [phonetic] or where the
10 whole thing breaks down.

11 MR. SEXTON: I have a quick question,
12 please. You mentioned staff being a problem in
13 their allowing these things to go on. Have you
14 interviewed any staff in your psychological
15 evaluations?

16 DR. KUPERS: Yes, I have.

17 MR. SEXTON: Are they traumatized by the
18 action of inmates towards them?

19 DR. KUPERS: Often they are, of course.

20 Correct.

21 MR. SEXTON: They are victims inside the
22 wall.

23 DR. KUPERS: Everybody is a victim or a
24 perpetrator, yes. I am not trying to blame staff.
25 I don't think -- I think staff -- the more I talk to

1 staff around the country about the problems of
2 prisoners with mental illness, the more I hear
3 universally is the complaint I don't want to be
4 taking care of people who are crazy, who have mental
5 illness. I am not trained to do it. I don't want
6 to be doing it. Some of those staff beat up those
7 people with mental illness, and I think it happens
8 out of frustration or meanness or whatever.

9 Whatever reason there is for it, it is not
10 okay. It is abusive. It should not be allowed. I
11 don't blame the prison staff for the awful things
12 that happen in prison. Some of them perpetrate very
13 abusive acts, and they should be punished for that
14 and not allowed to take care of people in prison.
15 But on the most part, prison officers and staff are
16 public servants trying to do a job. They become
17 frustrated by the very things we are talking about:
18 crowding, racial tensions, lack of resources to
19 treat people with mental illness. And abuses occur.

20 They should be properly investigated, and there
21 should be whatever proper recourse we establish as a
22 society.

23 MR. SEXTON: Thank you.

24 MR. MCFARLAND: Dr. Kupers, I was
25 fascinated by your testimony on Page 5 about the

1 proclivity of victims of sexual assault who have
2 some serious mental disabilities and what their
3 reaction or how they react to that trauma.

4 Do I understand correctly that it's been your
5 experience and your professional opinion that when
6 they are traumatized by sexual assault they would
7 become delusional and actually -- if they would --
8 if they have that, whatever their mental problem was
9 it gets worse, and if they were prone to depression
10 and suicide, it would exacerbate as opposed to
11 becoming necessarily aggressive or defensive of
12 themselves or acting out against somebody else.

13 DR. KUPERS: That's essentially correct.
14 The point I was making in response to your question
15 was we have a condition, posttraumatic stress
16 disorder, which we have by convention made into a
17 psychiatric diagnosis subsequent to trauma, and we
18 define trauma. Now if you looked at the history of
19 people suffering from schizophrenia or bipolar

20 disorder, what you will find is repeated severe
21 traumas. But they don't present clinically as
22 suffering from posttraumatic stress disorder. The
23 nightmares and flashbacks aren't as prominent in
24 their symptom picture as are hallucinations and
25 other signs and symptoms of schizophrenia or bipolar

1 disorder. That is the point I was making. The
2 population of people who've been traumatized is much
3 larger than that population who technically fit the
4 diagnosis of PTSD. In fact, the population of
5 people with serious mental illness trauma is very
6 pervasive.

7 MR. MCFARLAND: One of your solutions that
8 you recommended is separate housing?

9 DR. KUPERS: Yes. Part of the treatment
10 for posttraumatic stress disorder is the first step
11 in Herman's book Trauma and Recovery is safety. We
12 have to first establish safety. Someone who has
13 been raped in prison is not safe. I will guarantee
14 you that, for whatever reason, whether it is the
15 perpetrator is going to retaliate if they report or
16 that the same process is in effect under which they
17 got raped; that is, they are vulnerable for some
18 reason. Their reputation is such that they are
19 going to be raped again. They are not safe. They

20 have to be provided safety. The same is true of
21 anyone suffering from a mental illness. They are
22 more vulnerable than others, and they need a
23 treatment that takes first into consideration their
24 safety.

25 So separate units, step down units in prison,

1 which can be separate wings or separate units for
2 people who are suffering from mental illness.
3 Treatment might be a little more intensive, not as
4 intensive as a crisis center or a hospital.
5 California is doing that in administrative
6 segregation.

7 The first step, there are problems in mental
8 health in the California Department of Corrections
9 and Rehabilitation. The first step is to separate
10 people with serious mental illness from those that
11 don't have mental illness. And part of the reason
12 is because it wasn't good for the people who don't
13 suffer from serious mental illness to be next door
14 to someone who is up screaming all night.

15 Currently in California I believe the
16 administrative segregation units are split such that
17 the people with mental illness are in a separate pod
18 or unit than the others.

19 MR. SEXTON: I thought there was a

20 separate mental health unit here in Folsom.

21 DR. KUPERS: That's correct. That's not

22 what I am talking about. There is a lot of people,

23 over 50 percent of the prisoners according to the

24 federal Bureau of Justice, some of them serious.

25 Some of them are in the EOP program, which is what I

1 think you toured if you saw the program here. Some
2 of them are in administration segregation units
3 elsewhere throughout the system. And the point is
4 that there has been a policy change because of
5 recognizing the problem of mixing people with mental
6 illness and people that don't. That administrative
7 segregation units are split. Maybe someone from the
8 Department can explain that better for you, explain
9 that better, more detail.

10 MR. MCFARLAND: Thank you very much,
11 Dr. Kupers. You, of course, are welcome to stay as
12 long as you can.

13 Our next witness is Robert Dumond, and he has
14 provided us with written testimony which we have
15 read. He is a board certified, licensed clinical
16 mental health counselor with a specialty in exactly
17 the subject we're talking about. We are privileged
18 to have you, Mr. Dumond.

19 MR. DUMOND: Thank you very much. I want

20 to thank the panel for the pleasure to be here and
21 certainly an honor. Hopefully our testimony will be
22 important and helpful. I also wish to be -- great
23 honor to be with both Dr. Terry Kupers and
24 Dr. Barbara Owen, both of whom have contributed to
25 corrections. Terry with help treating mentally ill

1 in prison, and Barbara with the treatment of women
2 offenders and gender responsive treatment. I think
3 that is important.

4 I think framing this, the sexual assault is
5 one of the most pervasive and difficult nonlethal
6 offenses in corrections. I think that is something
7 we need to recognize right up front. We also need
8 to recognize that this is not a new issue. The Rev.
9 Louis White first identified this in 1826, and
10 Joseph Fishman a hundred years later, federal Bureau
11 of Prisons also identified that this was a problem
12 that existed, that it was contributed to by inmate
13 silence and also a code of silence and also staff
14 turning a blind eye.

15 What I have provided is some documented
16 history to kind of put some textualization on it.
17 It is important to at least address that. There are
18 factors which occurred from a number of witnesses
19 that are predictable, contribute to sexual violence.

20 The facility issue lacks vision, gangs of
21 aggressors, prison overcrowding, inadequate,
22 nonexisting classification, withdrawal of
23 surveillance and architectural issues. We also know
24 certain places in prisons, in jails contribute to
25 sexual victimization.

1 The issue of staff attitude needs to be
2 flushed out a little bit further. I would like to
3 do that. Staff unfortunately can contribute to this
4 in one of three ways. They can carry out sexual
5 aggression. They may know about or permit sexual
6 aggression and do nothing about it. They may
7 deliberately fail to carry out their custodial
8 responsibility, which is actually the most common,
9 and also the one that is most amenable to staff
10 treatment, management and training.

11 And one of the things I think is important to
12 recognize is some studies about correctional staff
13 which really belies some of the questions you've
14 heard over the last two days. Helen Eigenberg, who
15 formerly worked with the Bureau of Prisons, has done
16 two studies in two large correctional settings. She
17 found that many officers were unlikely to respond to
18 incidents when the victim was a homosexual or when
19 the incident appeared to be consensual. She also

20 found some officers and staff actually engaged in
21 victim blaming. She also found that a number of
22 staff attitudes -- the staff affect the people who
23 actually come forward and treatment they receive.

24 Troubling in one study, 46 percent of the
25 staff she surveyed said that some inmates deserve to

1 be raped. That was repeated about 12 years later
2 and in that study it was only 23 percent. But that
3 still belies the question about the human dignity
4 and constitutional care.

5 We also know that the dynamics of
6 victimization are the same in the community. The
7 same operating principles which affect victimization
8 exist, and the predators look for means, opportunity
9 and vulnerability. They select targets that are the
10 least able to defend themselves, who are not
11 believed or believable, who are unliked and
12 despised. Aggressors may use a number of manners to
13 control their victims: entrapment. They can use
14 pressure tactics, forced tactics, accompanied by
15 psychological manipulation. It is important to
16 recognize that anyone can be a victim of sexual
17 assault. Having said that, the research is very
18 clear, quote, men and women in prisons, in jails,
19 that the young and inexperienced, the new time

20 offenders and those with mental illness and
21 developmental disabilities are extraordinarily at
22 risk.

23 MR. MCFARLAND: Excuse me. Just a second.

24 Do you have the written testimony?

25 THE COURT REPORTER: I may. If not, I

1 will get it after.

2 MR. MCFARLAND: Because he is going very
3 quickly.

4 MR. DUMOND: I will also provide a copy of
5 my testimony.

6 Additionally, the research has documented for
7 male prisoners that there are certain other
8 characteristics which make more vulnerability: those
9 that are physically small and weak; those who are
10 not tough or street wise; those who are not gang
11 affiliated; those who are homosexual, transgendered
12 or who appear overly effeminate; those who violated
13 the code of silence, those rats and snitches, if you
14 will; those disliked by staff; those who committed
15 sexual offenses themselves; and those who have been
16 previously sexually assaulted. That is perhaps the
17 most difficult. Once one has been previously
18 assaulted, one is at a high increased risk for that.

19 The more of these factors that apply, the more

20 likely the victimization. As was noted by Ms.
21 Ellis, race has been identified as a factor, but
22 those in particular with settings of high racial
23 tension. That is an issue we have to identify.

24 Once a person has been victimized, they are
25 more likely to be targeted repeatedly, and as a

1 result they may do one of three things. They seek
2 protective custody, which clearly affects their
3 lifestyle and the services and treatment they
4 receive. They seek protection for what is called
5 protective pairing or hooking up, trading their body
6 for protection. They may act out violently
7 themselves, become the sexual aggressor, because the
8 best defense is a good offense.

9 The impact, unfortunately, of prison sexual
10 violence is catastrophic, and that applies to both
11 the community as well as applies to individuals in
12 jail setting. Individuals who are victimized
13 experience anxiety, depression, posttraumatic stress
14 disorder, suicidal feelings, attempts and
15 exacerbation of previous psychiatric facilities.

16 Unfortunately, as Dr. Kupers so aptly
17 described in jail and prison settings, the
18 victimization may be more traumatic for a couple of
19 specific reasons. Individuals who are in jails and

20 prisons often repeat this whole experience.

21 Physical assaults, they are often exposed to

22 ongoing sexual victimization over a period of time

23 by a multiple of offenders.

24 When I worked in the District Attorney's

25 office, I had the opportunity to work on hundreds of

1 rape victims in the community. With the exception
2 of those who had been kidnapped by their assailants,
3 those individuals had one event which was a
4 life-changing event and it caused them significant
5 harm. The difference in prison and in jails is
6 those individuals will be repeatedly targeted by
7 similar friends of that particular person and will
8 have multiple victimizations which certainly
9 increases, Dr. Kupers said, the complex
10 posttraumatic stress that Judith Herman talks about.

11 In the case of staff sexual misconduct, there
12 is also the additional violation that those who have
13 been charged with the duty and responsibility for
14 the care, custody and control have allowed for the
15 betrayal and alienation and really the abdication of
16 their responsibility.

17 As we know, most sexual assaults do not report
18 their victimization. As a result, they do not
19 receive the appropriate medical and mental

20 prophylaxis and treatment. Unfortunately, whatever
21 a victim does in a jail or prison compromises their
22 well-being and safety. It is a no-win situation.
23 If they go to PC, they're allowed not to get any
24 kind of services. If they fight, they compromise
25 their ability. If they stay in the community, they

1 are going to be continued to be victimized.

2 So that is clearly something that we have to
3 come up with a strategy that will respond to the
4 aggressors.

5 Now, how can we do this substantively? In
6 institutions and agencies where senior managers take
7 seriously security and prisoner sexual violence and
8 there are clear and established rules and guidelines
9 regarding the conduct of prisoners and staff and
10 where staff enforce those rules in a firm but fair
11 manner, you will see decreases in sexual assault and
12 increase in institutional security. Conversely, in
13 institutions where there is apathy, where there has
14 been a neglect by correctional staff and
15 administrators, where sexual behavior is ignored or
16 encouraged, where there is lack of security, sexual
17 behavior abounds.

18 In four years of research we've had some
19 pretty clear consensus of what works, and include a

20 number of things: increased surveillance and
21 supervision through the use of human and
22 technological resources; increasing the number of
23 staff to provide such surveillance and supervision;
24 improved inmate screening, classification placement
25 and segregation of vulnerable prisoners and inmate

1 sexual predators in the appropriate security level;
2 comprehensive ongoing staff training addressing
3 victimization, coercion, attitudes and response; and
4 use of scientific management principles to collect
5 data efficiently and make rational correction
6 decisions.

7 Good security, as you've heard from a number
8 of witnesses, can only be maintained --

9 MR. SEXTON: Excuse me, what was the last
10 comment?

11 MR. DUMOND: The use of scientific
12 management principles.

13 MR. SEXTON: Yes.

14 MR. DUMOND: We need to collect data
15 efficiently in order to make correctional decisions.
16 If we don't understand the nature of a problem,
17 where it's occurring, when it's occurring, under
18 what circumstances, we cannot deploy management
19 resources to respond. And one of the dilemmas have

20 been we have not had the ability to collect that
21 data in a responsible way, and as a result managers
22 haven't been able to deploy staff resources to have
23 technological cameras and to have an opportunity to
24 intervene appropriately. So data collection is
25 really part of this. You have to make that part of

1 the dilemma.

2 Good security can only be maintained when
3 there is adequate staffing levels with properly
4 trained and motivated staff with sufficient
5 resources. Hearing that over and over again, but
6 that is part of the dilemma.

7 Correctional authorities significantly
8 influence what happens in prisons and in jails.
9 Staff must consistently promote prosocial attitudes
10 and behavior in which human dignity and respect are
11 fostered between staff and prisoners and among the
12 prisoners themselves. The National Institute of
13 Corrections, as you've heard from Director Thigpen,
14 has had a great deal of history with staff sexual
15 misconduct. The issue of a sexualized workplace
16 needs direct intervention. Prisoners are very quick
17 to learn what the facility culture is, or what is
18 tolerated. It sets up an atmosphere, as you know,
19 of permissive behavior and erodes professional

20 boundaries. The use of racial slurs is no longer

21 acceptable in correctional settings.

22 And I would submit to you that this should

23 equally apply to issues of gender, sexual

24 orientation, mental, emotional, physical

25 disabilities and other differences.

1 MR. MCFARLAND: Is there anything else you
2 would recommend in addition to that that would
3 change the culture, the sexualized culture?

4 MR. DUMOND: Well, probably we will have
5 to start paying attention to, address how people
6 approach it because I think there has been a tacit,
7 if not agreement. People have looked the other way.
8 When people share and do things, some folks have not
9 responded affirmatively.

10 I noticed, Sheriff, you were very clear about
11 do we confront staff when they behave in ways that
12 are clearly inappropriate. We have not done that
13 consistently, nor have we had the ability to provide
14 the resources to do that. But I would also like to
15 comment, I think your point is well taken.

16 Prisons and jails are toxic environments. I
17 think that is important to recognize. They are
18 toxic environments. In fact, staff who work in
19 prisons say we are doing life on the installment

20 plan. We are subject to the same kind of rigorous
21 stress that the people that live there experience,
22 and that is very traumatic. We need to build and
23 make those situations careful not only for the
24 inmates that live there, but for the staff that work
25 there. When staff feels supported and they feel

1 they have the resources, when they have the ability
2 to intercede, they will provide more care.

3 Another model that I think the mental folks
4 here will recognize is there is something called
5 transference and counter-transference. People in
6 mental health are trained very clearly to know when
7 your personal feelings interfere with your
8 professional responsibilities. We don't do that
9 with corrections. That's something we probably need
10 to do much more clearly. Because it is inevitable,
11 I'm going to have some negative feelings about the
12 people I work with. I work with, as we all tend to,
13 I work with some reprehensible individuals. That
14 has been very difficult. Yet I cannot let that
15 personal feeling interfere with my professional
16 responsibility. If it does, then I need to remove
17 myself from the situation. But the system has to
18 give me permission to do that, and right now there
19 is no vehicle to do that.

20 MR. SEXTON: The system, they can do the
21 same thing with inmates. Are we allowing inmates to
22 continue the racial slurs? Are we going to continue
23 --

24 MR. DUMOND: I think your point is clear.
25 We have to develop a culture of respect that

1 manifests both from staff to inmates and inmates to
2 themselves. That has to be part of the solution.

3 MR. SEXTON: Do we need to address the
4 court somewhere along the line in regards to their
5 decisions coming down that in some areas conflict
6 with --

7 MR. DUMOND: By calling free speech. The
8 goal of corrections is care, custody and control.
9 If racial epithets are going to destabilize the
10 institution, we need to do something about that
11 within the institutional purview to manage that. I
12 don't think that courts would be disapproving of
13 that in terms of free speech or liberty interest
14 because that compromises the safety and security. I
15 think developing a culture of respect is endemic to
16 that.

17 For the record and I'm sure you know, the Jury
18 Commission's Institute Report very clearly calls for
19 a culture of respect and professionalization.

20 That's part of the dynamic. We have to treat people
21 as human beings and continue to support them. It is
22 part of the professionalization of it. And
23 unfortunately, Secretary Hickman had a very good
24 point yesterday; he made a point that says: Is
25 there something about corrections that causes it to

1 be a negative environment? I think we'd do well to
2 remember the standards from the folks that the
3 nature of keep those who are kept and those who are
4 the keepers can sometimes compromise how people act
5 and behave towards other human beings. We need to
6 address that.

7 We also need to, again, make the situation --
8 I think corrections has had some inordinate
9 difficulties that I think -- I am glad Terry talked
10 about it. Corrections has been in the task of
11 dealing with things that it was never meant to deal
12 with. We have an inordinate amount of -- we are the
13 day cycle psychiatric facility in the United States.
14 Corrections was never meant to deal with that. We
15 don't have resources; we haven't had the resources.
16 We are being asked to do all things for all people.

17 This debate will not be solved simply here,
18 the body politic as Secretary Hickman very clearly
19 said that. We don't work independent of

20 legislators. We don't work independent of budgets.

21 We don't work independent of public will.

22 I think one of the messages you are going to

23 hear from all of us, you've heard from a number of

24 people, this is an issue about community safety. If

25 people go to prison and jails and they are

1 victimized and violated, they become angry, they
2 become frustrated and they become extremely mentally
3 ill, they get compromised, they take drugs, they may
4 go out and act out toward other people; and that
5 creates the cycle of victimization. That's part of
6 the message we need to communicate very clearly to
7 our staff and to the community. That's part of the
8 solution.

9 So the systemic approach, I think it is
10 important that -- Executive Director Thigpen talked
11 about it. You've heard even examples this morning.
12 The effective response requires we look at the
13 totality of what is going on. In order to do that
14 we have to look at all the interrelated points. Any
15 policy and procedure that you as a body look at
16 should have a minimum of four dimensions:
17 prevention, data collection and analysis,
18 interdiction and prosecution, intervention.
19 Whatever the policies that are created, they may be

20 unified, they may be separate; the agencies whom you
21 look at should be able to articulate not only the
22 policy that created the sexual violence, but also
23 any changes and additions that are required in other
24 policies that are related to that.

25 The other thing is the policies should create

1 protocol, should create post orders which are tied.
2 But the true test is really are we -- are you using
3 that. It is really about accountability and follow
4 through. You can have all the policies in the
5 world, but unless you follow through with
6 supervision and enforcement, you really do not have
7 any buy-in.

8 In terms of witnesses, I think you are all
9 very much aware of that. Complex organizations are
10 very difficult. You saw an example of that even
11 this morning. What someone at the top may
12 understand may not have filtered down to the mid
13 management or lower levels of your organization.

14 Clearly one of your challenges is going to be,
15 and I recommend to you strongly, that you get a
16 number of people from different levels of the
17 organization, from different disciplines because I
18 guarantee that you are going to have a different
19 understanding of what the mission is and what the

20 responsibilities are, and that is part of the
21 dynamic. Having said that, I think it also is
22 important that you guarantee in some demonstrative
23 way that witnesses who appear before your panel be
24 protected against ill-advised actions by employers
25 and by agencies who may not want to hear when

1 someone is taking exception to what is being said.

2 I think that is part and parcel. If you want to get
3 accurate information, you also need to provide some
4 guarantees and protection.

5 Staff training is the linchpin. We know that.

6 I am glad Terry talked about some of the ways to do
7 it. I think I would like to again strongly support
8 and model both what the National Institute of
9 Corrections has done, what Director Thigpen has
10 done, what Andie Moss has done. I think what you've
11 seen is we've had a ten-year history of these staff
12 sexual misconduct, which is a great start. I am
13 very honored, and I know Barbara has been a
14 colleague with Andie on this.

15 We have done a tremendous amount to really
16 influence, I think, an understanding of sexual
17 violence and how to approach it using the models of
18 staff sexual misconduct. One of the messages, I
19 think, you need to ask when confronting the people

20 you are working with: Have they availed themselves
21 of those free resources from NIC? Are they using
22 the videos? Are they using the resources? Do they
23 understand that that technical assistance is
24 available to them? If they are not, why not? This
25 is something, the federal government has provided

1 this resource under PREA that is available, and all
2 agencies should be availing themselves of that.

3 In addition, the Urban Institute has done some
4 important things under staff training that I think
5 you need to address. Number one, the panel should
6 look at not only the training that is provided, but
7 when it is provided, the material that is utilized,
8 by whom, the topics covered, and also its
9 credibility of the trainer.

10 One of the things we heard over and over again
11 is that sometimes the people doing the training have
12 been involved in staff sexual assault misconduct
13 themselves, have been put in training because they
14 can't be in direct care anymore. That really
15 undercuts the whole mission of training. The people
16 who do the training have to be understanding and, in
17 addition, not just training. You are dealing with
18 the issue of, the complex issue like sexuality and
19 sexual violence. That person, those individuals

20 have to understand the complexity and be able to

21 talk about it in a rational way.

22 There are clear barriers to reporting. I

23 think we are all aware of that. It is important to

24 recognize that sexual assault and rape is the most

25 underreported crime in the United States, in the

1 communities.

2 MR. MCFARLAND: What is your source for
3 that?

4 MR. DUMOND: Numerous sources. National
5 Crime Victimization Service, Uniform Crime Reports,
6 National College of Women's Survey. We clearly in
7 terms of reporting to police authorities the
8 variability is somewhere between 5 percent, in the
9 National College of Women's Survey 2000, to 38
10 percent in the most recent Crime Victimization
11 Survey by BJS in 2005.

12 So we know in the community most people don't
13 report to police authorities. It is important to
14 recognize we are dealing with jails and prisons.
15 There are an incredible amount of additional
16 barriers that are involved, not only guilt, shame
17 and fear, but now I'm going to be compromised, I'm
18 going to be identified, I'm going to have been
19 really put in a negative situation because there are

20 some dynamics about jails and prison. Once you've
21 acknowledged you have been victimized, you are at
22 extreme risk for continued victimization.

23 MR. MCFARLAND: You're extrapolating in
24 the prison context from the general population?

25 MR. DUMOND: For the record, it is not

1 only from the prison context. Cindy
2 Stuckman-Johnson has done two well controlled
3 studies in a number of departments of corrections.
4 Her data suggested only about 29 percent of the
5 population who reported in an anonymous survey had
6 reported to the police, to the correctional
7 authorities that they had been sexually assaulted.

8 So we have data from the community that
9 certainly is associated with data from the jails and
10 prisons. But we also have some prison studies which
11 are clear that a small percentage will report.

12 One of the things that I think we need to
13 address individuals who come forward really need to
14 understand that they are going to be taken
15 seriously. They need to know they are going to be
16 protected. There has to be adequate safety and
17 security. There has to be substantive
18 interventions. An appropriate response is both
19 discipline and prosecution where it is appropriate.

20 Investigators, as you've heard, you can be a great
21 investigator -- I am a rape certified investigator.
22 You need to have special training to work with
23 victims of sexual assault, and I know Ms. Ellis is
24 very much aware of this. In addition, victims need
25 to be able to talk with people. I may need to talk

1 with someone, for example a female or a male, and I
2 need to have some opportunity to do that because
3 that is my right in the community, and that
4 certainly should be afforded to people in jails and
5 prisons as well.

6 MR. MCFARLAND: I want to ask each of you
7 one question. I am going to lose Dr. Kupers in a
8 couple of minutes. I wanted to ask: Do you have a
9 professional opinion as to what the actual incidence
10 of sexual assault is in, say, CDCR?

11 MR. DUMOND: I would not be -- I am not
12 from California. I pass. I would not be the best
13 person.

14 MR. MCFARLAND: How about nationally?

15 MR. DUMOND: Nationally, there is some.
16 The data sets vary. Cindy Stuckman-Johnson
17 suggested about 22 percent in one study and about 15
18 percent in another, which is extrapolated down to
19 about 12 percent nationally. That is the best sort

20 of extrapolation.

21 MR. MCFARLAND: Is that your opinion, 12
22 percent?

23 MR. DUMOND: I don't think that is an
24 unfair speculation. I am not sure that I would be
25 in the best position to say that is appropriate. I

1 think just for the record, and I know Barbara may
2 weigh in on this, we are in the same place we were
3 with child abuse reporting. In the mid 1970s we had
4 no knowledge of what the incidence of child abuse
5 was in the United States. We have mandatory
6 reporting so now we have a big spike.
7 Unfortunately, your task is going to be cutting --
8 are you seeing a real incidence or are you seeing
9 another big spike or are people reporting because
10 now we are paying attention to it. If you pay
11 attention, now you will report. That is a real
12 challenge.

13 MR. MCFARLAND: Dr. Kupers, do you have an
14 opinion?

15 DR. KUPERS: What I can say with certainty
16 is we do have figures in the 20s, and Cindy
17 Stuckman-Johnson is the best research in that
18 regard. Lockwood and some of the earlier research
19 came up with 27 percent are subject to unwanted

20 sexual aggressive acts. That doesn't mean rape. So

21 we have to define our term.

22 MR. DUMOND: Fourteen percent is what he

23 said.

24 DR. KUPERS: There is -- what I know for

25 certain is there is a large number of unreported

1 cases even to the researchers. For instance, the
2 whole issue of consensual sex. Even where if the
3 person involved in the sex doesn't think of it as
4 sexual assault or rape, but in my definition it is.

5 In the figures that come out in the low 20s
6 are massively underreported So it is much higher
7 than that is what I know for certain. We don't have
8 a figure.

9 MR. MCFARLAND: We're jumping ahead, but,
10 Prof. Owen, do you have an opinion on that?

11 DR. OWEN: I have many opinions. I am
12 going to ask us all to shift our perspective a
13 little bit, and I will build my case in my remarks,
14 and I absolutely understand your charge in the
15 legislation, I am very familiar with your role. I
16 think there's been an overemphasis on counting. I
17 think this is a moving target that's definitional,
18 that sample size is even analytically driven. I am
19 going to suggest that we take a step back and look

20 at the broader context.

21 And the question you put to us for our

22 preparation, the major thread was deterrence. And I

23 want to talk about looking at deterrence from

24 several perspectives, whether this study says 22 or

25 this one says 23. Any one of us with a basic

1 Statistic 101 class can tell you what is wrong with
2 the study. But I think our goal and our use of the
3 attention afforded by PREA and the leverage as well
4 as the resources give us an opportunity to move away
5 from tedious academic arguments, is it 24 percent or
6 is it 26 percent. Oh, no, you asked an open-ended
7 question. Oh, no, you truncated your analysis.
8 Believe me, I can bore you for hours with the
9 debates that statisticians will subject you to when
10 you start getting the BJS data.

11 I want to suggest an emphasis on counting is a
12 misplaced emphasis. Again, I will build my case
13 when I have my time.

14 MR. SEXTON: May I ask you a question?

15 DR. OWEN: Yes, sir.

16 MR. SEXTON: Coming from a practitioner's
17 aspect, whether it be robberies or manpower
18 allocation or budget, the Legislature, whatever, our
19 society is based on a count. Count staff, I heard

20 somebody talk about counting staff since I have been
21 here. All of these things, if we go with the logic
22 that you're talking about, how do I as a
23 practitioner, how does somebody from the Bureau of
24 Corrections, how do we justify our needs for those
25 additional staffing, justify the needs for

1 reclassification, justify the need for a protective
2 Level I? Somewhere along the line we have to have a
3 mechanism to justify these requests. Using your
4 logic, how do we go about doing that?

5 DR. OWEN: You are describing what is
6 known in the literature as the public health
7 dilemma. If we put all our resources in prevention
8 in deterrence, how do we know, in fact, we have
9 accomplished? And I will suggest to you that public
10 health has a much greater payoff than we're ever
11 going to be able to count. Simple example --

12 MR. SEXTON: I agree with you.

13 DR. OWEN: Smoking cessation. There is
14 not a person that is going to tell you because we
15 can't count how many people stop smoking because of
16 the ads, because of the school stuff, because of the
17 role modeling, all the variety of strategies that
18 have been deployed in the smoke cessation that is
19 going to tell you that we shouldn't do it because we

20 can't count.

21 MR. SEXTON: I agree with you. I guess

22 also we need to have a prevention program on Let's

23 Not Have You Come to Jail or Prison.

24 DR. OWEN: There is lots to say about

25 that. My point is simple, that we need to run in

1 several tracks here, and the emphasis primarily has
2 been on counting, investigations and prosecution.
3 And I am going to make some different suggestions.

4 MR. MCFARLAND: Our statute requires DJS
5 to do some ranging, so unfortunately counting
6 necessary.

7 DR. OWEN: I understand your point. I
8 think we can expand our use of the PREA.

9 MR. MCFARLAND: Doctor, do you have
10 anything you want to add, to supplement because I
11 want to let Mr. Dumond finish and then Prof. Owen?

12 DR. KUPERS: At this point, no. I am
13 always delighted to hear Dr. Dumond and Dr. Owen.
14 I'm sorry I have to leave you, but it's been a
15 pleasure. I would be happy to have further --

16 MR. SEXTON: I have one question possibly.
17 Based on what you're saying, is an outside
18 investigation by an independent party into the
19 allegations an issue or would that help?

20 DR. KUPERS: I would vote with this
21 morning's panelists, some kind of independent
22 investigation would be crucial. It doesn't have to
23 be an entire investigation. It could be an
24 oversight body. It could be another department.

25 MR. SEXTON: Dr. Dumond, from what I heard

1 of the beginning of your testimony, I believe you
2 would feel outside investigations would be
3 warranted?

4 MR. DUMOND: I like Mr. Gennaco's
5 representation. I think there is a place for joint
6 investigations. I think if you have an independent,
7 properly trained agency source who is using
8 professional models, coupled with an oversight by
9 the prosecutorial individuals or persons with that
10 kind of strategy.

11 MR. SEXTON: How about if you don't have
12 it in the county, but you're dealing with not L.A.
13 County but East Bagolia, Idaho, or something?

14 MR. DUMOND: I think you have to use the
15 resources that are available. When I worked in the
16 District Attorney's office, we had a specially
17 detailed office, and that was one of my tasks when I
18 worked there. I'd actually go out and do some of
19 those investigations, and that is a model that is

20 available to some vendors. You need to use the
21 resources that you have.

22 MR. MCFARLAND: Do you have a nominee or a
23 department that would provide to you oversight of
24 external investigation?

25 DR. KUPERS: I think it would be regional.

1 I am not suggesting a federal oversight. In
2 particular, I think that might be what you arrive
3 at. I think it would be regional. I think each
4 region -- for instance, in mental health what we
5 have done is ask that the state Department of Mental
6 Health investigate the Department of Corrections
7 around cases involving people with serious mental
8 illness.

9 What I'm suggesting is some kind of
10 collaboration where there is a relative neutrality;
11 that is, the party doing the investigation --

12 MR. SEXTON: I guess what I would call an
13 outside agency would be if it was, for example,
14 Folsom use Sacramento County or use Folsom PD. That
15 is what I am asking.

16 Would that bring more consistency, more trust?

17 DR. KUPERS: I believe so, as long as
18 there is not a rubber stamp mentality.

19 Thank you all very much.

20 MS. ELLIS: Thank you.

21 MR. DUMOND: In deference to Dr. Owen, I
22 want to make a couple more points. There has been
23 some discussion around the gay, lesbian, transgender
24 population, but I think it is a misnomer to suggest
25 by putting those individuals, because being --

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1 whatever your sexual orientation is, does not
2 preclude being a sexual predator. I think the issue
3 is more about housing and parity in cell matching.
4 Clearly you want to have people who have like
5 situations, like issues, and you want to be clear
6 that just because someone is of the gay or
7 homosexual community does not necessarily mean they
8 are not going to be aggressive because I think that
9 is a simplistic response. But clearly having a
10 recognition of the needs of people who are gay and
11 also transgender or bisexual and also having genuine
12 respect.

13 The other thing I'd suggest to you is a very
14 important question around staffing. Sheriff Michael
15 Hennessey in San Francisco has made a great deal.
16 He's been there since 1979. He's made a great deal
17 of, I think, important contribution by suggesting
18 that having openly gay and bisexual, transgender
19 staff on his department does provide a vehicle both

20 for role modeling and also for genuine respect and
21 dignity. That has worked. He is someone definitely
22 to consult. He has observations on that.

23 I think the issue of confidentiality is a
24 conundrum. I think it is important. There is
25 challenges in professional privileges, and

1 confidentiality, I think you need to consult with
2 state law, federal law to professional codes of
3 ethics. I would submit to you that there is several
4 things to consider. When I treated individuals, I
5 was very clear what the limits of confidentiality
6 were, right up front. Made it clear. If you tell
7 me these things, this is what I have to do.

8 That has to be part of the dynamic. If you
9 have some clear understanding of what that privilege
10 entails, and I think mental health and the medical
11 segment could be a support. Giving those people the
12 opportunity, can help someone come along and say,
13 "You know, I can help you through this and provide
14 you with safety and security if you will allow me to
15 do that."

16 I will always point out what the Moss Group is
17 going to be doing in February of 2007, is going to
18 be convening a group of medical and mental health
19 practitioners to look at this and a number of other

20 issues. Confidentiality is certainly going to be
21 one of the issues. I think the issue -- it is -- we
22 are looking at -- there are 8,900 correctional
23 facilities in the United States. Some jails are
24 very large, if you've seen. But some jails, about
25 50 percent of the jails have 50 people or less. You

1 are talking an inordinate disparity in terms of the
2 kinds of facilities. Juvenile facilities, about
3 3,500 juvenile facilities of all different types.
4 It is an inordinate problem.

5 The problem you heard this morning about if
6 you are in a jail you have a wide variety of people
7 that come. In addition, you are going to have some
8 state prisoners who serving time in jails because
9 states and county departments of corrections
10 transfer prisoners who may be problematic, who may
11 be family issues. So there are all kinds of issues.
12 So that certainly is going to be a conundrum.

13 I will close by saying we can make this work.
14 I think most people in corrections want to do the
15 right thing. They need the tools and resources.
16 But I think, as you well know, this is not something
17 that is going to be handled simply by corrections.
18 Body politics has to be involved. Legislators have
19 to be involved. Prisons have to be -- jails have to

20 be made safer. Because if we don't do that we are
21 just going to create more victims, and that should
22 be our mantra. I will leave it to Barbara.

23 MR. MCFARLAND: Thank you very much,

24 Dr. Dumond.

25 Dr. Owen, thank you for your patience.

1 DR. OWEN: I too am a fast talker. I will
2 do my best to honor my southern roots and slow down
3 a little bit. I too would like to thank you for
4 inviting me.

5 I am testifying as a prison sociologist who is
6 going to ask you to take a broader view. I have
7 conducted research at local, state and federal
8 prisons and jails for almost 25 years. And in the
9 time I have I am going to ask you to think about
10 shifting your perspective, think about shifting your
11 thinking a little bit. My facts and my concepts are
12 entirely congruent with what many of the other
13 witnesses have suggested to you, but I am going to
14 ask us to take a step back and look at some of these
15 facts, some of these concepts from a little
16 different vantage point. So allow me to develop
17 that.

18 As an introduction, allow me to present my
19 credentials. I received a Ph.D. in sociology from

20 U.C. Berkeley in 1984 where I conducted research on
21 correctional officer culture. As a very young
22 person, I was hanging around San Quentin talking to
23 correctional officers. So that was kind of my
24 introduction to this world. I was employed by the
25 federal Bureau of Prisons for a number of years,

1 working in male institutions and in the central
2 office. There I worked on the social climate
3 instrument, which you may hear about in other
4 venues. In my own thinking I am returning to this
5 notion more and more, and I will be describing that
6 as I go along.

7 Since 1990 I have been professor of sociology
8 at Cal State Fresno. Ms. Ellis has worked with my
9 chair. I send you his regards.

10 MS. ELLIS: Thank you.

11 DR. OWEN: In this capacity I have
12 continued my work with women's prisons and juvenile
13 female offenders. It was just a matter of luck that
14 when I moved to Fresno, the State of California was
15 setting about building the world's largest prison
16 for women 32 miles from my house. And since then
17 they have built another one 33 miles from my house.
18 I have been very, very fortunate through the kind
19 intercession of many people in this room to have

20 access to the women's prisons, not only in this
21 state, in others. I have also done a lot of work
22 for the National Institute of Corrections. I was an
23 intern there in 1980 as I am fond to say. I am one
24 of the longest running employees or workers with
25 NIC. I worked as a trainer and researcher primarily

1 in the area of operational practice, agency
2 planning, staff sexual misconduct, and I am one of
3 the coauthors of NIC's work on gender responsive
4 policy.

5 I've written you several books, numerous other
6 publications, and most recently I am a coauthor with
7 a sentencing reform group that our pamphlet will be
8 coming out soon with all these discussions about
9 sentencing reform on a national level.

10 I conducted research on PREA for NIC and The
11 Moss Group on staff perspective on sexual violence.
12 Mr. Thigpen mentioned our work. I understand you've
13 got a copy of our first publication. There will be
14 multiple publications if I can get off the road, and
15 stay home and write.

16 MR. MCFARLAND: This is it?

17 DR. OWEN: Yes, sir.

18 MR. MCFARLAND: For the record, Staff
19 Perspective on Sexual Violence in Adult Prisons and

20 Jails, dated June 2006, Volume I.

21 DR. OWEN: I'm prepared to give you

22 multiple details. Usually my presentation is about

23 three hours. Lots of time on that.

24 MR. MCFARLAND: Not today.

25 DR. OWEN: I am currently under contract

1 with CDCR, examining operational practice in women's
2 facilities. I have given probably three, four,
3 presentations to their executive staff on PREA,
4 various issues that you heard today.

5 I have just received a grant from the National
6 Institute of Justice looking at the context of
7 sexual and other forms of violence in women's
8 prisons and jails. And many remarks I will --
9 examples I will give today go to the issue of gender
10 here. I would just like to note that all the other
11 panelists have exclusively said "he" in talking
12 about the victims or the perpetrators in prisons,
13 and I would just like to point out that here in
14 California we have almost 12,000 women locked up in
15 our state system, and that is bigger than many, many
16 other state systems.

17 You mentioned Alabama earlier. If you added
18 parolees, that is about as big as we are with women.
19 So it is not just a he issue. I would like to state

20 that strongly. It is also not just an adult issue
21 as you are well aware. PREA is more than about just
22 prisons and more than just about rape. I will use
23 the term "sexual violence" because to me that is the
24 preferred term. Again, in keeping with my
25 suggestion that we broaden our perspective. We

1 broaden our talking about rape, which brings up male
2 images, talks about male-on-male violence. I think
3 if we look at sexual violence as our term, I think
4 we, again, expand our perspective.

5 In my testimony I am going to share my views
6 on the factors that shape sexual assaults and sexual
7 violence. Again, following instructions, talking
8 broadly about the ways in which correctional systems
9 can deter such violence. I feel very strongly that
10 we need to run on several tracks. We have -- we,
11 and I do feel like I am part of the PREA community.
12 I am on the advisory board of BJS work. I'm on
13 several NIJ studies. I've gotten around with The
14 Moss Group with a lot of PREA issues. I think the
15 focus has been prematurely narrowed to such concrete
16 operational issues as investigation, proving,
17 punishing, identifying predators, identifying
18 victims, counting, as you heard my speech on that
19 briefly.

20 I want to suggest to you that this approach is
21 short-sighted. If we focus only on after-the-fact
22 issues, we miss golden opportunities. Again, as
23 your direction suggests that let's talk about
24 deterrence. So, again, it is a multiple track to
25 run on.

1 My written testimony provides significant
2 details on the research literature on sexual
3 violence in women's institutions. I provided that
4 to you. I am happy to answer questions about that.
5 But in my role today I will want to look at the
6 context of violence and safety specifically. This
7 is not to say that individual victimization is in no
8 way serious. The harm that occurs to human beings,
9 as Mr. Dumond and other witnesses have suggested to
10 you, is extremely serious and has far-reaching
11 implications on operational practices in
12 institutions as well as community safety post
13 incarceration. But, again, in asking your
14 indulgence to take a step back and look at the
15 broader context of violence in correctional settings
16 as a way of looking at sexual assault. Finally, I
17 am going to offer some concrete suggestions about
18 training and education for both staff and inmates.

19 Don Specter also mentioned this earlier, why

20 we need to look at the broader context and not
21 narrow our focus. In sociology we talk about macro
22 factors and micro factors, and I want to elaborate
23 to you some of these macro factors. Mr. Dumond
24 ended his remarks with talking about the opportunity
25 we have, and I think we need to take a step back

1 from what we can do and look at what we should do.
2 It is very easy to focus on DNA analysis and cameras
3 and the kind of concrete things at this micro level.
4 Again, in the multiple approach analysis this makes
5 enormous sense, but I just want to push your
6 thinking toward this broader view.

7 This particular approach sees that
8 organizational, environmental and individual factors
9 contribute to all forms of violence in facilities.
10 Mr. Dumond and Dr. Kupers mentioned corrections'
11 role in the cycle of victimization. I think if we
12 are going to interrupt this cycle, we need to look
13 at it in all these fronts. Many of the witnesses
14 have talked about inmate and staff culture, and that
15 means the values and behaviors related to safety and
16 violence among inmates, and I will expand on this
17 idea as we go.

18 Again, while sexual violence among and against
19 inmates, the key focus of the PREA initiative, I

20 suggest that this broader approach view, examining
21 the correlate of violence and safety in all
22 facilities across multiple dimensions should be the
23 focus of our deterrence efforts. Again, the
24 attention afforded by PREA, it is more than prison,
25 it is more than rape, should be focused in multiple

1 aspects. If we just look at prison rape, I think we
2 are missing the opportunity to look at these larger
3 forms of victimization and the context that supports
4 this victimization.

5 Mr. McFarland, earlier you asked if PREA was a
6 waste of time. I think if we continue to narrow the
7 focus, that it could be seen that way. And so,
8 again, I am pushing back a little and say let's take
9 a broader view here.

10 I feel very deeply that PREA gives us an
11 opportunity to introduce another dimension of
12 humanity in correctional environments and a place
13 that sorely lacks it. To my view deterring sexual
14 assault should be one of our primary foci in this
15 overall safety strategy. And that is the word I'm
16 going to elaborate on in the time I have left.

17 We need to look at safety and all its aspects
18 and defining safety, both in terms of individual
19 institutions as well as in terms of larger systems.

20 Again, the narrow focus on sexual assault misses the
21 broader question of general safety in jails and
22 prisons.

23 Prisons and jails that are sexually unsafe are
24 also physically unsafe. The work that I've been
25 looking at with my assistants and colleagues around

1 the country shows that sexual violence occurs within
2 the nexus of physical violence and material
3 violence. And we know this from our work on
4 victimization in the streets, that sexual violence
5 in domestic relationship is tied into intimately,
6 and I use that word advisedly, to physical violence
7 and material violence. So again, this broader view
8 shifts our attention to, I think, some of these
9 causal and contextual factors. This very narrow
10 focus on sexual violence, particularly after the
11 fact, obscures some of the environmental culture
12 factors that contribute to all forms of violence.

13 Texas, for example, for reasons Dr. Kupers
14 indicated to you, framing their approach to prison
15 sexual assault through their Safer Prisons Program,
16 and I think it's a very productive way to talk about
17 this. They have an agencywide strategy and the
18 institutional positions dedicated to improve safety,
19 specifically sexual safety, in all their facilities.

20 So let me talk about some of the factors that create
21 and maintain safety and violence in correctional
22 institutions.

23 First let me say that CDCR is not alone in
24 this, but in every system I've been in in the last
25 15 years we see an increase in numbers. And I want

1 to suggest to you that systems are being crushed by
2 these numbers, and I mean that word very advisedly.
3 The number of inmates that are in California prisons
4 is well over twice the capacity that these prisons
5 were built for.

6 Think about your house, last time you had
7 family visiting for the holidays. The holidays are
8 coming up. You are going to have people sleeping on
9 the couches. You are going to be running through
10 towels and toilet paper, and you're all going to be
11 happy when all those people leave. The California
12 system has been running with double and some places
13 triple capacity. This has very, very serious
14 implications on everything from the physical plant
15 to staff fatigue, to our issue at hand, and, of
16 course, that's looking at sexual violence.

17 CDCR is not alone, but under the current
18 crowding conditions and raising prison and jail
19 population, these numbers really obviate the issue

20 of safety and violence. Housing inmates in
21 facilities that were designed for many fewer human
22 beings, operating facilities with inadequate number
23 of staff who often work overtime and reducing
24 programming and treatment opportunities, each
25 contribute to the context of potential violence I'm

1 developing for you here.

2 I am entirely sympathetic to the correctional
3 officer position. Many of these staff, as
4 Mr. Dumond and Dr. Kupers pointed out, did not come
5 to this work to work with mental health inmates.
6 They are not trained to work with individuals with
7 serious mental illnesses, and many of the problems
8 we are talking about today go to that issue. The
9 fact is that the Department of Corrections and many
10 systems are the largest provider of mental health
11 care without the adequate staffing, certainly
12 without adequate resources.

13 Dr. Kupers said they didn't come to be a
14 mental health worker. I think we need to understand
15 that as well. While there is much to say about the
16 crowded prisons and jail crowding, I will combine my
17 comments to safety issues. But I just want to begin
18 with the central fact that as long as prisons and
19 jails continue to be crowded, safety will continue

20 to be compromised. Humane living conditions,
21 adequate numbers of trained staff, effective
22 programs and treatment service will contribute to
23 violence in these settings. And again, I know it is
24 very easy to say this is not in purview. But until
25 we look at the causes and until we look at the

1 factors that support and maintain violence in our
2 facilities, we aren't looking at the issue of
3 deterrence as you suggested we do.

4 Other witnesses have described the contribution
5 that context made by staff culture, administrative
6 leadership attitudes towards inmates and other
7 agency factors. Mr. Specter in his testimony this
8 morning talked about the insensitivity to inmates.

9 I want to again suggest a broader view and look at
10 ways in which inmates have been, to use a term that
11 they use in Australia, otherized. The inmates have
12 been made the other. And again, it is due to these
13 crushing numbers. It is hard to relate to
14 individual human beings when you have two to three
15 times the number of inmates in your housing unit
16 that it was designed for.

17 There was a lot of discussion of vocabulary.
18 And even though it sounds like a small thing, it is
19 commonplace in many systems in this country, and I

20 am going to use some of the polite words, to call
21 inmates thugs, crooks, et cetera. In women's
22 prisons some of the epithets are even more damaging.
23 And Bob pointed out the issue of racial epithets
24 have been more or less controlled, at least in
25 formal environments. And I want to suggest we start

1 talking about the language we use to refer to
2 inmates because vocabulary is important.

3 Mr. Dumond provided significant detail on the
4 current research on violent victimization. I want
5 to draw your attention to his specific description
6 of the dynamics of assault because this is indeed a
7 process. He talked about means, opportunity and
8 vulnerability; and I think understanding it as a
9 process rather than an event leads into a broader
10 understanding here. I would suggest the panel
11 investigate how these dynamics contribute to a
12 context that either promotes or undermines safety.

13 Other witnesses have described the critical
14 importance of a systemic and policy based approach.
15 I concur with their views. Specifically, Mr.
16 Thigpen described NIC's experience with systemwide
17 policy based approaches, and, again this is very
18 consistent with the approach I am outlining for you
19 here. I would emphasize that improving reporting

20 mechanisms, developing and providing staff training
21 and inmate education are key aspects of these
22 approaches. Expanding mechanisms that support
23 inmate reporting in safe and confidential
24 environments is a critical first step, but, again, I
25 want to suggest to you that reporting after the fact

1 is only one track to run on.

2 Research on sexual violence suggests that the
3 majority of assaults occurring as part of a process,
4 whether it is protective pairing, whether it's
5 manipulating someone into a seemingly appearing
6 consensual relationship, and here I'm also talking
7 staff sexual misconduct as well as inmate sexual
8 violence, this is not an isolated incident. There
9 is a process.

10 MR. MCFARLAND: Is the research you are
11 referring to in the context of prisons or sexual
12 violence generally?

13 DR. OWEN: In both places. And Bob's done
14 a workman-like job outlining all the literature for
15 you. I suggest you look at that closely. But we do
16 know it starts in a variety of ways. We do know
17 from some of the work that we have done in NIC,
18 focus group interviews, for example, that a lot of
19 sexual violence indeed is domestic violence. You

20 may think that it only applies to the relationship
21 in women's prisons, but this concept first emerged
22 in our work in male prisons, that much of the sexual
23 violence we see is the result of a relationship gone
24 bad. So, again, a process, a context approach that
25 allows us not to see only as isolated event that is

1 to be investigated and prosecuted, but instead to
2 step back and think about ways in which we can get
3 more in the front end of the cycle.

4 In many systems inmates are given very few
5 opportunities to report their concerns prior to
6 assault. Instead they are told they must name names
7 and preserve evidence to support a formal
8 investigation. As you know from the BJS work, the
9 substantiated and unsubstantiated figures are
10 dramatically different, and I want to suggest to you
11 that substantiated claims is an unreachable standard
12 in terms of deterrence, that we need to think of
13 ways in which inmates can report their concerns
14 before assault rather than after an assault.

15 MR. MCFARLAND: Dr. Owen, how would you
16 suggest that CDCR or other DOCs expand the number of
17 ways prisoners can report their concerns on sexual
18 assault?

19 DR. OWEN: Let me develop that in my

20 comments on staff selection and training. I hope to

21 answer that for you.

22 MR. MCFARLAND: We don't have much time.

23 DR. OWEN: I understand that.

24 MR. SEXTON: If you're going to report a

25 concern, how does a practitioner -- again, how do we

1 handle a disciplinary action? How do we move the
2 other inmate based on a concern versus fact when
3 they, in fact, turn around and file a grievance or
4 lawsuit?

5 DR. OWEN: That is exactly what I am not
6 saying. I am saying let's focus on identifying the
7 predator is misplaced, focus in terms of deterrence.
8 If an inmate feels unsafe, he or she should be able
9 to report it to a variety of staff who are trained
10 to talk to the inmate about ways in which he or she
11 can keep themselves safe.

12 MR. SEXTON: Part of that is keeping the
13 inmate safe, as I understand it. Everybody is
14 advocating moving the individual with a problem.
15 How do we do that on a concern versus without any
16 fact?

17 DR. OWEN: Again, the feeling of unsafety
18 is the fact, and I am not suggesting that moving is
19 the only solution. There are ways to train inmates.

20 There are ways to train women about protecting
21 ourself from unwanted sexual advances. There are
22 ways to teach women, and, again, as a woman I can
23 give my experience. When you grow up as a woman in
24 society you are taught what to look out for. You
25 are taught how to identify folks who aren't good for

1 you. I think we need to look at educating inmates
2 how to protect themselves rather than moving towards
3 constantly isolating everyone. We can't isolate our
4 way out of the problem.

5 MR. SEXTON: On a parallel of a series of
6 events, domestic violence, we still have to deal
7 with facts. We deal with concerns, but we get the
8 facts. Really dealing with the problem.

9 DR. OWEN: But, sir, only if you're
10 talking about prosecution. If you are talking about
11 prevention, you have a broader view.

12 MR. DUMOND: I would submit to you that
13 most staff who work a unit or cell block or a place
14 where -- a substantial place, they know the
15 prisoners under their supervision. They know who is
16 a predator and they know who is vulnerable.

17 MR. SEXTON: That was the question.

18 MR. DUMOND: I really submit we need to
19 empower staff. Again, it is a two-end approach, not

20 just the onus of the victim to come forward. Staff
21 need to use, and I like your comment, due diligence
22 and being at work. Staff has a responsibility
23 there. I think we need to make and empower and
24 support them to be able to do that.

25 DR. OWEN: Again, my point is thinking

1 about ways in which we can give inmates a variety of
2 strategies, other than locking up and other than
3 transferring, to protect themselves at the beginning
4 of this process rather than at the end of the
5 process. So much of what we do is focused after the
6 fact. I am suggesting there is ways to think about
7 before these things happen. Again, I am conscious
8 of the time.

9 I want to talk just very, very briefly about
10 staff training. Staff training is more than
11 classroom work. It has to do with staff selection
12 as well. We need to think about the ways in which
13 our staff are not only trained, but selected. The
14 importance of providing information and skills to
15 all staff, not just custody and medical, about the
16 context of sexual assault and their role to creating
17 and maintaining safer correctional environments.

18 A similar recommendation comes to inmate
19 education. Inmates should be educated at

20 orientation and throughout their sentences about the
21 ways they can protect themselves. They should be
22 educated about the system's commitment to safety in
23 all forms. In addition to educational opportunities
24 provided to staff, inmate per education has been
25 shown in good effect in multiple places.

1 MR. MCFARLAND: Where?

2 DR. OWEN: Texas has a system. I think
3 California is developing one. Inmates learn how to
4 do their time from other inmates. I suggest they
5 learn how to protect themselves. That is one of the
6 components of my NIJ study. I did define the ways
7 women keep themselves safe.

8 MR. MCFARLAND: The one that is upcoming?

9 DR. OWEN: Come back in two years.

10 Again, I want to call the panel's attention to
11 specific issues in the juvenile justice system,
12 about which much less is known.

13 To conclude, everybody's favorite sentence,
14 the best deterrence is an emphasis on safety for all
15 inmates and staff. While no system defines inmates
16 as unworthy of protection, I suggest that renewed
17 emphasis on safety for inmates and for staff should
18 be promoted on all fronts. And my discussion here
19 should revolve around safety for human beings from

20 systemwide policy to individual post orders, the
21 emphasis on safety goes beyond this narrow
22 definition of security and investigation after the
23 fact. A safer environment not only protects inmates
24 and staff from violence, it is more conducive to
25 rehabilitation and treatment.

1 I would urge the panel to investigate
2 strategies that measure and move toward improving
3 safety rather than counting individual incidents as
4 a primary way to deter sexual violence. The focus
5 can be shared to look at deterrence and prevention
6 as well as investigation and sanctioning. Prison
7 gives us some tools. NIC and the federal partners
8 have given many tools. I suggest they be promoted.

9 And finally, I want to agree with Mr. Dumond,
10 we expect the prison to solve problems created
11 elsewhere. The mission of the prison, in my view,
12 should be twofold, safety and rehabilitation. If we
13 use the spotlight afforded by PREA to bring out
14 safety issues, I feel it will go a long way.

15 Thank you very much.

16 MR. MCFARLAND: Thank you, Prof. Owen.
17 What strategies can you offer or commend to us for
18 measuring or moving towards improving safety?

19 DR. OWEN: As I said in my opening

20 remarks, I'm becoming more and more interested in
21 the notion of assessing correctional environments.
22 Again, these are not mutually exclusive strategies.
23 The ideas advanced about classification, identifying
24 individuals who are vulnerable, identifying
25 individuals who are at high risk, all that makes

1 sense. But I think we also need to look at
2 identifying environmental and culture and
3 organizational factors.

4 MR. MCFARLAND: Example.

5 DR. OWEN: For example, I would suggest to
6 you that overtime probably has an enormous
7 correlation with how alert, to use the word, staff
8 can be. Again, staff are being crushed by the
9 numbers. So we need to think about the ways in
10 which that both staff overtime, lines of sight,
11 numbers of inmates, all those things come together
12 to create this context. This is a multiple variant
13 problem and we need to keep our eyes on all of the
14 variations. So one of the strategies would be to --
15 and the Bureau of Prisons has instruments to do
16 this. We are developing assessments for sexual and
17 physical and material safety for women prisoners as
18 part of our NIJ work. I don't know the answer to
19 that. That is why NIJ is giving me money to do this

20 work. I think we can assess safety.

21 MR. MCFARLAND: Any other strategies for
22 assessing safety?

23 DR. OWEN: I just want to repeat the
24 notion of making it clear to staff and inmates that
25 it is our job to be safe. It is the staff's job to

1 keep us safe, that is very different than security.

2 Safety has a broader meaning. And that inmates who

3 don't feel safe need to think about ways in which

4 they can improve their own safety.

5 MR. SEXTON: Can you please go back. I am

6 still not with you on the options before the fact.

7 What are examples there?

8 DR. OWEN: I think putting resources into

9 developing prevention strategies as opposed to only

10 investigating things that have already happened.

11 MR. SEXTON: Can you give me some examples

12 of what you think could be done in regards to

13 prevention?

14 MR. MCFARLAND: I have dibs on your answer

15 that I asked for a few minutes ago about how should

16 a prison system expand the number of ways prisoners

17 can safely report their concerns before the fact?

18 DR. OWEN: One strategy that could be

19 maximized, many systems have 800 numbers to call to

20 report staff misconduct. And I think that there
21 should be other ways to report, whether it is
22 through a third party phone. In England they have
23 what is called Samaritan, and inmates can call
24 outside organizations and report feelings of
25 unsafety. In England they call bullying when

1 inmates are being picked on, and they talk to an
2 outside person who says, "Well, let's talk about
3 what are the kind of places, for example, where this
4 stuff occurs?" And then they talk about what can
5 you do differently next time.

6 MR. SEXTON: I have 600 inmates. They
7 call the 800 number, and they call me back to say
8 you have a problem. How do I identify who that
9 individual is? How do I forward that help? How do
10 I know who I am helping?

11 DR. OWEN: Again, sir, I am trying to
12 suggest that we need to look at rather than an
13 individual focus who is getting hurt to think what
14 is in the environment that contributes to this.

15 MR. SEXTON: I am missing something here.
16 We are trying to give the inmates an option before
17 something happens.

18 DR. OWEN: To teach them to protect
19 themselves.

20 MR. SEXTON: They call an 800 number to
21 report something. How do I help diffuse that
22 situation of, say, assaulted inmate? How do I
23 diffuse it? How do I know? You've got 3,000
24 inmates in these facilities here. How does whoever
25 receives the information, how do we get that help

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1 that this inmate is asking for? How do we get it to
2 them?

3 DR. OWEN: I am suggesting less of an
4 individual focus and more of an environmental
5 focus.

6 MR. SEXTON: Somebody is in trouble.

7 MR. DUMOND: Let me also --

8 MR. MCFARLAND: This panel is going to end
9 in five minutes. Five real minutes.

10 MR. DUMOND: You can look at grievances
11 that prisoners argue, and you can track what some of
12 the issues that they are looking at. If you do it
13 systematically, you are going to come up with some
14 of the themes that Barbara is talking about. Get
15 individuals to bring issues to the table. They do
16 it in a formal way and they do it in informal ways.

17 The other thing you need to do is have
18 opportunities for families, other people external to
19 come in and also some real response by authorities.

20 I've been an expert witness in cases where families
21 have called up and say, "My son is going to be
22 raped." And the warden has said, "Well, he should
23 buck up and take it like a man."

24 That is a real case. It went to the U.S.
25 District Court, and it has become the correctional

1 authority, and feel that that was the appropriate
2 response.

3 MR. MCFARLAND: Is there any role for
4 faith based organizations and other community
5 organizations in this kind of prevention?

6 DR. OWEN: Absolutely.

7 MR. DUMOND: Mental health and faith based
8 people have -- they are the oasis in the storm.
9 There are places where you can go and people feel
10 comfortable because they are not going to judge you
11 and treat you with human dignity. I think they're
12 inordinately responsible and helpful and should be
13 part of this.

14 DR. OWEN: One thing we found out at NIC
15 focus groups is that staff face it, inmates need
16 more places to talk; to faith based people and
17 community people are just some examples. Sometimes
18 talking about their concerns about your safety with
19 someone who you know won't judge you and won't say,

20 "Well, until you bring me DNA evidence I can't do
21 anything about it." We were told time and time
22 again one response to inmates is, "I think this is
23 going to happen. Come back after it happens."
24 Again, I think that defeats our purpose.

25 MR. MCFARLAND: I have one stenographic

1 question on page --

2 DR. OWEN: I don't know how to type.

3 MR. MCFARLAND: -- Page 3, second

4 paragraph, your brief review of research.

5 DR. OWEN: Yes.

6 MR. MCFARLAND: Second line, second

7 paragraph. Should it read the few studies mentioned

8 indicate prevalence of sexual victimization, and

9 insert the words "of women"?

10 DR. OWEN: Yes.

11 MR. MCFARLAND: Appears to have been

12 lower.

13 DR. OWEN: Yes.

14 MR. MCFARLAND: Thank you very much.

15 We can talk with you for days, and I wish we

16 could. But we are going to now ask for a

17 representative -- rather than taking a break, we are

18 going to ask either Warden Malfi or Mr. Dovey, both.

19 We understand they would like an opportunity to

20 comment on or correct anything from their
21 perspective that needs to be stated. Warden Malfi
22 has an engagement, an emergency telecom in 20
23 minutes.

24 MR. DOVEY: Ms. Still and I have the same
25 emergency.

1 MR. MCFARLAND: As we are done with this
2 impromptu panel, we will take a five-minute break
3 and then invite our next panel.

4 You are both still under oath.

5 Is there, first of all, any testimony of a
6 CDCR employee this morning that you would like to
7 correct, clarify or supersede?

8 MR. MALFI: Yes. I think there were some
9 statements made and I would hope that we can clarify
10 them and go over them real quick and clear it up. I
11 don't have all the -- I thought you would ask the
12 questions, to be honest. I have them off the top of
13 my head, but I can do it either way.

14 MR. DOVEY: I think they related more to
15 protocols when we move offenders out for --

16 MR. MALFI: Housing.

17 MR. DOVEY: The whole issue of what are we
18 training our staff, what does the policy document
19 that we provided you actually say. So I think from

20 a local perspective I think the warden has a few
21 comments from a little higher altitude perspective,
22 and I have some other comments.

23 MR. MALFI: I would like to start by
24 saying both of the staff members did the best they
25 could under the circumstances. I think they believe

1 their testimony was correct, and I think it was
2 correct in their viewpoint to a point.

3 The one thing is the training, obviously.
4 There appears to be a breakdown at my facility, and
5 we are not going to pass excuses or put it on
6 somebody else. The training is being conducted.
7 However, it appears for some reason the test was not
8 being conducted at the end of training.

9 MR. MCFARLAND: The exam on the four-hour
10 training?

11 MR. MALFI: Yes, sir. I think the
12 sergeant said they were just using the PowerPoint to
13 teach, and it appears that might be somewhat
14 correct. I think he was also using a lesson plan,
15 but not in proper conjunction. So we will fix that;
16 we will get right to it. Obviously, we will make
17 sure the test is being administered. In his
18 defense, I don't know if the proper word is defense.
19 In his --

20 MR. MCFARLAND: He doesn't need any

21 defense.

22 MR. MALFI: He did go to the training like

23 all the master trainers were given, and there were

24 some memos that came out that said, "Hold up on it."

25 I don't know if it was received at our prison prior

1 to me coming there. The bottom line, we got off
2 kilter. We will get to it. We will have a memo
3 back to you, to your panel, within two weeks. I
4 will get the address and we'll have it corrected.

5 MR. MCFARLAND: Thank you.

6 MS. ELLIS: Thank you very much.

7 MR. MALFI: Thank you.

8 MR. MCFARLAND: I have specific questions,
9 but, Mr. Dovey, anything from a little higher
10 altitude you want to clarify or correct?

11 MR. DOVEY: As I told you, I would try to
12 spend as much time with you during the last two days
13 as I possibly could. It was fortuitous I was here
14 this morning, I believe. As one of the panelists
15 testified to earlier, sometimes despite the best
16 intentions, there might be gaps between the top and
17 the line, and, obviously, that is what we found.
18 But I see these as opportunities to take action, and
19 I don't mean in terms of a retaliatory sense.

20 For example, as we were kind of contemplating
21 what this means, it means that I need to review the
22 lesson plans of all other 32 prisons pretty quickly.
23 If we are half-way through the training block, it is
24 imperative that based on the lesson we have learned
25 through this exercise that we need to make darn

1 sure, despite the clear direction we provided, that
2 the lesson plans are being followed and that there
3 are not any questions that need to be answered. So
4 that is one overview statement.

5 Another view is, as I recall coming back from
6 Florida less than two years ago as the deputy
7 director training for the NIC, less than two years
8 was the first time we heard about PREA in
9 California. So when I look at the monumental
10 changes that we have made already in our regulations
11 and our Department policy and training plan on
12 providing the training and establishing SART teams
13 at institutions and getting people to begin to talk
14 about it, you can't do anything with a problem if
15 you don't put it on the table and try to address it.
16 And so for our Department and for the adult
17 institutions, I am glad you came. I am glad I came,
18 and I think that that would be clearly one of the
19 recommendations we would want to add to the

20 exhaustive list you already have.

21 MR. MCFARLAND: These are addressed to
22 either of you, whoever wishes to address them. What
23 prisoner information do you request from a sheriff's
24 office or jail that they are sending?

25 MR. DOVEY: It varies on counties. If it

1 were up to us, we would request everything we can
2 get. Not every county does exactly the same
3 presentence or probationer's report. Some counties
4 do a much better job than others. We have engaged
5 other counties in briefings with their
6 transportation staff or transportation deputies. If
7 there are high risk prisoners, if it requires
8 special monitoring, gang members, persons who
9 require more supervision than others because of
10 particular needs, then we always ask for that
11 information.

12 MR. MCFARLAND: Do you ask about sexual
13 orientation?

14 MR. DOVEY: I can't tell you that we do.

15 MR. MALFI: I don't think that's actually
16 included.

17 MR. MCFARLAND: Do you ask for any
18 information that is relevant to the North Star
19 vulnerabilities matrix?

20 MR. DOVEY: No. I can tell you we do not.

21 I can tell you one thing that is a promising

22 experiment that we're engaging in now. It's a

23 strategy that we have been involved with with San

24 Diego, and it has a result of a Senate bill that

25 passed a couple years ago, and we are now trying to

1 leverage the work instead of San Diego County doing
2 all of their workups and then we might get the
3 information and we might not, we are trying to
4 leverage that work by pooling our resources and
5 doing the reception and evaluation of our offender
6 before he actually leaves the county jail.

7 MR. MCFARLAND: I notice, Ms. Still, I've
8 had an answer to the last question I asked her to
9 come on up. You are still under oath.

10 MS. STILL: Two quick responses. One is
11 the North Point compass that was spoken to earlier,
12 the Department is basically implementing that
13 reentry program, and we are pursuing a pilot to
14 expand that with a goal being upon intake as part of
15 our risk assessment. It is going to take us a while
16 to get there. What we do currently is we do an
17 initial housing review. We have a very specific
18 form; it is an 1882 form that we screen every inmate
19 coming in off the bus. That is part of our trying

20 to determine appropriate housing for safety, not

21 only the offender, but also our staff.

22 MR. MCFARLAND: I was asking about what

23 you request of the sheriff's office.

24 MS. STILL: What we request, as Mr. Dovey

25 said, basically it is different by what counties

1 provide to us as coming in the door. Typically,
2 very little.

3 MR. SEXTON: You use the NIC
4 classification?

5 MS. STILL: No, we have a departmental.

6 MR. SEXTON: Is it based on the NIC?

7 MS. STILL: No. It's departmental classic
8 by UCLA, Richard Burkert was created and
9 revalidated. But we are going to implement their
10 risk needs that the compass North Point is part of
11 not only that but our educational -- to complement
12 our classification system. But in terms of the
13 SB 618, like Mr. Dovey said, there is a law that
14 passed so that we could partner and get more
15 information from counties, not only from a safety
16 but from a not duplicating medical services in
17 knowing who is coming to us, what medical or mental
18 health needs.

19 MR. MCFARLAND: You have a legal right

20 under SB 618?

21 MS. STILL: SB 618 gives us the legal

22 right to partner with three counties, a pilot

23 project. The Legislature's intent is for us to

24 eventually work with all 58, but they had to start

25 with a pilot, and the first pilot to be selected and

1 implemented is San Diego, and the two subsequent
2 counties are still in the process of being selected.

3 MR. MCFARLAND: How do you react to the
4 idea of having independent outside investigators
5 look into sexual assault rather than investigating
6 yourself?

7 MR. DOVEY: We are hoping to whatever
8 inspection transparency that would be required. But
9 in many ways I feel that we already have that. I
10 know you got a good overview of our current process
11 this morning. I don't want to duplicate that
12 testimony. But the result of our investigations are
13 now published on the worldwide Web for anyone to
14 look at. That is pretty transparent. The Office of
15 the Inspector General does that for us. Many of the
16 incidents require immediate notification to the
17 Bureau of Independent Review who works for the
18 Inspector General. So incidents like an in-prison
19 rape would require that notification. So that we

20 give the Bureau of Independent Review real time
21 discretion as to whether or not they want to roll
22 out to the prison right then, be a part of
23 monitoring what they observed in terms of
24 performance.

25 MR. MCFARLAND: Is that Matthew Gates'

1 [phonetic] outfit?

2 MR. DOVEY: That is Matthew Gates.

3 MR. MCFARLAND: His term cannot be
4 truncated by the governor; is that correct?

5 MR. DOVEY: He reports not to me or the
6 agency secretary, but to the governor.

7 MR. MCFARLAND: He is not at the pleasure
8 of the governor, as I understand.

9 MR. DOVEY: Right.

10 MR. MCFARLAND: What information -- do you
11 get information currently from counties, county
12 jails, if a prisoner coming your way has been
13 sexually assaulted or alleged they've been sexually
14 assaulted?

15 MR. DOVEY: It is hit and miss.

16 MR. MCFARLAND: Do you ask for it?

17 MR. DOVEY: We ask for all the information
18 they could possibly provide us. We have met -- I've
19 been to meetings, for example, with officials from

20 Los Angeles County Sheriff's Department so that we
21 could not only get casework information, but medical
22 information. Many times with duplicate medical
23 evaluations that have already been completed by
24 another county, and so you are talking about
25 continuity of care and not wasting tax resources.

1 It would be very helpful. That is another reason
2 why we are hoping that pilots like the one at San
3 Diego would help us.

4 MR. MCFARLAND: Warden Malfi, what do you
5 tell -- does your staff tell prisoners when they are
6 at orientation when they first arrive, about sexual
7 assault, about department policy, about how to
8 protect themselves, if anything?

9 MR. MALFI: It is in our orientation book,
10 and we believe we have a zero tolerance over it. We
11 try to do the best we can to have people speak out.
12 I heard several people testify about that. I think
13 that probably is a problem even in prison, to get
14 people to come forward. But I think we are doing
15 the best we can. I really believe that.

16 MR. MCFARLAND: Do you expect your
17 oriented -- the COs who do the orientation of the
18 new fish to, without fail, tell them there is a zero
19 tolerance here, that you are actively soliciting

20 every way possibly to find out about incoming
21 predatory activity by inmates or a staff person, and
22 they will have confidentiality, they will not go to
23 ad seg, et cetera, et cetera? Is that
24 unequivocally, regularly, as a matter of policy and
25 protocol told to every new fish?

1 MR. MALFI: I don't know if it is told the
2 way you are saying, but I know that my awareness of
3 listening to this panel for the last two days'
4 testimony, that I will go back and I'll do
5 everything I can to make sure it is put that way.

6 MR. SEXTON: Can we get one orientation
7 handbook? I would love to see one.

8 MR. MALFI: Yes.

9 MR. MCFARLAND: I just had one last
10 question. In CDCR, do male COs do pat downs and
11 and/or strip searches of females?

12 MR. DOVEY: We do cross-gender searches
13 last year.

14 MS. STILL: September 2005.

15 MR. SEXTON: Question for Warden Malfi.
16 If an inmate reports that a sexual assault took
17 place six weeks prior to. This morning we were told
18 there would probably be little investigation done.
19 Would there be -- once a crime is reported, would

20 there be a follow-up investigation?

21 MR. MALFI: We would definitely follow up

22 on that. I don't know who said that. We would

23 definitely follow up on that. I am sure you are

24 well aware from the medical standpoint there is not

25 too much to do after six weeks. And I don't know if

1 the person was trying to get across that maybe
2 evidence would have been lost or whatever, but we
3 are definitely still going to look into it and take
4 appropriate actions.

5 MS. ELLIS: I have one question related to
6 family members of victims, rape victims. Is there
7 pressure? Do you get calls? Is there interface
8 with family members? What happens to the family?

9 MR. DOVEY: I can speak to that. I have
10 been through quite a few investigations when I was
11 warden. And I can tell you that I was on a first
12 name basis with family members. I have -- the
13 question was: Do you know of anybody who has been
14 fired because of this kind of activity, been
15 disciplined? I can tell you I have fired several
16 people because of this, disciplined several others.
17 And I have had to really reach out to victims
18 because there is a lack of trust of some kind, not
19 because the staff working for you aren't doing

20 everything they possibly can, but by that time there
21 is such a lack of trust in the system that it really
22 takes sometimes a warden's involvement to really
23 make sure that the people feel safe. That is
24 exactly those two wardens' testimony.

25 MR. SEXTON: Is there any possibility that

1 PREA's going to make it into your Bible? That is
2 the inmate's comment.

3 MR. DOVEY: I think it is on its way there
4 now.

5 MR. SEXTON: Thank you.

6 MR. MCFARLAND: Thank you both very, very
7 much.

8 (Conclusion of Panel 7.)

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PANEL 8

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MR. MCFARLAND: For our final panel of

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this hearing we have the pleasure of representatives

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from the union that governs or that represents the

6

correctional officers here in California. Mr. Mike

7

York will be the first witness, the union steward at

8

CSP-Sacramento, and then Mr. Joe Baumann who has

9

been designated by the members as the representative

10

for the entire union to address questions we may

11

have as well.

12

Thank you, gentlemen, for being here.

13

MR. BAUMANN: Thank you for the

14

opportunity.

15

MR. MCFARLAND: Mr. York, you provided us

16

some written comments.

17

MR. YORK: Yes, sir.

18

MR. MCFARLAND: And the floor is yours.

19

MR. YORK: Hello. My name is Mike York.

20 I would like to thank the panel for the opportunity
21 to provide testimony in the very important issue of
22 in-custody, inmate safety and systemic changes CDCR
23 has made to eradicate in-prison sexual violence.

24 In my current assignment I am one of the
25 CSR-SAC job stewards and a correctional counselor,

1 approximately 20 years' line experience as a
2 correctional officer and six years as a union
3 steward. To address some issues that you
4 questioned, I will put forth, number one, CCP local
5 chapter supports a comprehensive program to design
6 safety for all staff and inmates.

7 We believe the factors and environment that
8 are conducive to deterrence of sexual assault
9 includes the following: inmate overcrowding;
10 unconventional housing, such as gymnasium placement;
11 physical plant limitations creating lack of
12 visibility; lack of visibility cameras and the
13 ability to have clear visibility into living areas
14 of inmates; how to scrutinize the training of
15 correctional officers and medical staff at prisons;
16 collecting training material in addition to all
17 policies that are revised, and when created should
18 be presented annually in a classroom setting.

19 These are all things that I believe would help

20 officers to better themselves. As a union steward I
21 understand the staff and inmates should be
22 accountable for any violations of policies, and each
23 individual should be held accountable for their
24 actions.

25 This concludes my written testimony. Does the

1 panel have any additional questions? And thank you
2 again.

3 MR. MCFARLAND: We may very well. I will
4 give Mr. Baumann an opportunity to make any opening
5 remarks.

6 MR. BAUMANN: Thank you. My name is Joe
7 Baumann. I've been a correctional officer for 21
8 years. I have been a union activist for the last
9 12. I am also a recording secretary for Corrections
10 USA.

11 Mr. York hit it pretty well on head:
12 overcrowding; lack of staff; lack of consistent
13 policy, both written and implementation; lack of
14 leadership. We have had incident upon incident with
15 employees being sent out to do their jobs without
16 proper safety equipment, and that trickles down to
17 the interaction between the staff. You can go to
18 the institution where you have 250 inmates triple
19 bunked, two officers on the floor. It is impossible

20 for the officers to maintain any kind of level of
21 proper -- or proper level of safety.

22 Training and preemployment screening is a real
23 integral part of it. One of the problems we have as
24 a department is the sheer volume of inmates. My
25 institution, rehabilitation center, we are 250

1 percent of capacity for 20 years, without seeing no
2 end in site.

3 MR. MCFARLAND: Which institution?

4 MR. BAUMANN: The rehabilitation center
5 down to Norco.

6 MR. MCFARLAND: Norco.

7 MR. BAUMANN: Yes, sir.

8 We've been running 240 percent capacity for 20
9 years that I know of. All of a sudden it becomes a
10 big emergency in the last six months. Whatever, we
11 can have the shortage of bodies to fill positions.
12 Management oftentimes answers that with cutting
13 positions. So we have fewer and fewer officers
14 doing more and more with fewer and fewer people.
15 And the federal court mandates mental health care
16 delivery and physical health care access to --
17 access for developmentally disabled and physically
18 disabled. And we are doing those trainings to meet
19 those mandates with fewer and fewer people.

20 And it is a real challenge for the
21 rank-and-file employees. To be real frank, we don't
22 get leadership from Sacramento. We don't get good
23 direction or it gets watered down by the time it
24 gets to our level. There is no access from our
25 perspective to the upper-end of the Department, to

1 tell the upper-end of the Department what is going
2 on.

3 Thank you.

4 MR. MCFARLAND: What do you, and this is
5 addressed to either. What do you recommend as a
6 best practice for COs to prevent prisoner sexual
7 assault?

8 MR. YORK: I believe education is number
9 one, prior to, before the person comes into the
10 prison. For the workforce on the street or
11 workforce in the institution, education is number
12 one.

13 So the education process that we implemented
14 recently on the rape prevention is going to take
15 effect in the future. It was just implemented and
16 it is a good implementation. I am all for that.
17 Awareness, professionalism, that's all accountable
18 to. And I work at CSP-SAC, and I can only speak for
19 CSP-SAC. We have a unique situation over there. We

20 do have a lot of programs. We do have quite a bit
21 of staff. We are still understaffed and
22 overcrowded, but we have the CS units. We have the
23 EOP units. We have sensitive yards.

24 MR. MCFARLAND: What kind of units?

25 MR. YORK: Sensitive needs. PCs.

1 MR. MCFARLAND: S&Ys.

2 MR. YORK: S&Ys. We offer programs, and
3 it seems that the programs are effective. And by
4 offering programs as such and education, then the
5 officers also get involved in that program.

6 Classification. Unfortunately I am a
7 counselor, so I am involved in the classification
8 system. The problem there is caseload sometimes
9 gets overbearing. When a caseload gets overbearing,
10 then the effectiveness of the study of someone's
11 case is rushed, and hopefully that doesn't occur,
12 but it is. And effective counseling is important
13 for housing a person correctly. And I feel that we
14 do that over there different than other institutions
15 because we have counselors for you. We have
16 counselors for PSU. They are specialized. And so
17 the need is met more at CSP-SAC. But even then the
18 overcrowding and the ability to do our job because
19 we need more staff if we are going to achieve

20 programs is an answer to part of the problem.

21 MR. MCFARLAND: Why is it so difficult,

22 because COs get paid time and a half for overtime?

23 MR. YORK: Yes, sir.

24 MR. MCFARLAND: Wouldn't it be cheaper to

25 hire new people?

1 MR. BAUMANN: Yes, sir.

2 MR. YORK: Yes, sir.

3 MR. MCFARLAND: Aren't more folks looking
4 to apply? It seems like it would be a win-win
5 situation.

6 MR. BAUMANN: Well, whenever we came into
7 the current contract back in 2001 there were
8 approximately 1,800 vacancies, open positions
9 statewide. There was a political decision back in,
10 I believe it was, 2003 and 2004, to close our
11 correctional officer academy, based on some
12 population projections that showed a decline of
13 15,000 inmates over two budget cycles.

14 MR. MCFARLAND: That didn't decline, did
15 it?

16 MR. BAUMANN: No. In fact, it kept
17 increasing. We had a substantial number of people
18 who ended up retiring. Thankfully, not as many as
19 everybody had projected. People at headquarters

20 projected that we wouldn't have a fast exodus to
21 retire. They decided to close it down for 13
22 months.

23 Then the problem is the location of the
24 institutions versus the workforce available in the
25 area. It doesn't pay nearly as much as people would

1 like to believe. When you are trying to buy a two
2 bedroom \$600,000 house in Salinas or you are forced
3 to commute four hours a day to get to work. And
4 even when you start talking about a top step CO; I
5 didn't work any overtime last year. I made \$66,000;
6 \$66,000 in California isn't a whole lot of money.
7 You have people trying to compare a top step CO to a
8 first year academic at some junior college or
9 wherever, and it is apples and oranges.

10 The other thing I think is our entry
11 requirements. We run a 16-week academy. We run a
12 background preemployment psycho eval, all the
13 minimum requirements that you would have to pass to
14 get on any of the major agencies that are law
15 enforcement agencies in California. We don't pay a
16 competitive wage. We tried to, but it just hasn't
17 worked out because of the administration.

18 MR. MCFARLAND: Would you agree that your
19 members would be safer not having to escort sexual

20 assault victims to outside facilities, to U.C. Davis
21 Medical Center, better to, A, either to emphasize
22 prevention or, B, have the wherewithal in the
23 facility to?

24 MR. BAUMANN: Agree. Anybody who says
25 prevention isn't the cheapest and easiest and less

1 heart wrenching route is an absolute idiot. Anytime
2 you have to take an inmate out of the institution,
3 you put yourself, the inmate and general public at
4 risk.

5 MR. MCFARLAND: So would the union be
6 supportive in that vein of greater use of cameras
7 rather than hiring?

8 MR. BAUMANN: Well, cameras are only as
9 good as -- we have had cameras at other institutions
10 that have a 12-hour loop. In fact, there was an
11 incident you guys brought up earlier where someone
12 had reported a sexual assault six weeks earlier.
13 There is so many blind spots. Are you going to have
14 a camera in every restroom, in every shower? Camera
15 in every cell? I mean --

16 MR. MCFARLAND: I am not sure I
17 understand what your answer is. You do or don't
18 support greater use of camera technology?

19 MR. BAUMANN: I don't. Personally I don't

20 because I think the cameras are just a Band-Aid. We
21 just went through a whole episode of management
22 mandating cameras for suicide prevention and the
23 federal court stepping in saying that is the worst
24 thing you can do is not have a man on the ground and
25 face-to-face contact, to have a camera giving people

1 a false sense of security. I don't know if a camera
2 is what -- would act as deterrent, particularly a
3 camera like this over in the corner. A camera fixed
4 in one location is easy to work around. The camera
5 is just a Band-Aid. I honestly don't know.

6 MR. YORK: I believe a camera is only as
7 good as the person watching the TV that monitors the
8 camera. If you are going to have a camera somewhere
9 and there is no available body to monitor that
10 camera and get response there immediately, what good
11 is the camera?

12 MR. MCFARLAND: That makes sense.

13 MR. SEXTON: Follow-up on your question.
14 If the State of California were to take a economical
15 efficient digital camera system that has a year
16 capacity on them, would you support that?

17 MR. BAUMANN: I don't know. I watch the
18 federal government down at Lompoc. I am just saying
19 well --

20 MR. SEXTON: Would you support it in

21 California?

22 MR. BAUMANN: The problem I have with that

23 is whatever it comes to putting in a camera, just

24 like when we got batons. It was another reason to

25 cut staff.

1 MR. SEXTON: Are you concerned about the
2 impropriety of a correctional officer?

3 MR. BAUMANN: Not at all. Do you know
4 that is one issue I didn't hear anybody expand upon.
5 One of the worst things you want is a partner, and I
6 have had that, who's having a sexual relationship
7 with an inmate. And anyone who compromises
8 themselves to that level would compromise you in the
9 drop of a hat.

10 MR. SEXTON: Thank you.

11 Mr. York, there are countless systems that are
12 available. Even in my state of Alabama, as I
13 mentioned this morning, the bottom of everything, we
14 even have cameras, and we have cameras in my
15 facility. Would that be something that -- it would
16 seem to me -- this was the one thing we have found
17 that our cameras, they protected the officer when an
18 allegation was made.

19 How do you feel about cameras in the facility?

20 MR. YORK: Mr. Sexton, I am from Indiana

21 and we have --

22 MR. SEXTON: I went to high school there,

23 Culver.

24 MR. YORK: Culver, I know it well.

25 The cameras to me would serve both sides. It

1 would protect us from being accused of something
2 wrong. It would protect the inmates because we
3 could react to a situation that maybe we couldn't
4 see prior.

5 I have no fear of anything because I know that
6 I do my job correctly, professionally. Therefore, a
7 camera does not scare me at all being in front of
8 24/7, and it shouldn't anybody else because the
9 professionalism we are to do, protect.

10 There is no criminality. I just want to be
11 sure that you know that. There are bad correctional
12 officers just as there is any other law enforcement.

13 I do not advocate bad; I advocate good. And
14 as a union rep, when I give my speech to the new
15 cadets coming in, I let them know that I am not to
16 be used as their excuse to get off of something. I
17 only protect them if a violation of their rights
18 have been made. If they do something wrong, they
19 are going to get punished.

20 MR. SEXTON: Thank you.

21 MR. MCFARLAND: Between the two of you,
22 you have over 40 years of experience as correctional
23 officers. Would you agree that a camera, whether it
24 rotates or is fixed, whether it can spot every blind
25 spot or not, has a preventative effect on sexual

1 assaults and misconduct?

2 MR. BAUMANN: Agreed, yes.

3 MR. YORK: Yes.

4 MR. MCFARLAND: It may not be a cure-all,
5 but it is better than nothing?

6 MR. BAUMANN: Agreed. It could certainly
7 have a gain. I want to reiterate. I've watched
8 alarms go in and not being an excuse to cut
9 staffing. I have watched batons issued and that
10 being an excuse to reduce staffing. Pepper spray as
11 an excuse to reduce staffing. Stab resistance vests
12 as an excuse to cut staffing. I have got 240
13 percent capacity with 100 percent of my staff.

14 MR. MCFARLAND: Given that problem, I can
15 understand your concern about cutting staff. What
16 about redeploying staff?

17 MR. BAUMANN: Redeploying staff means the
18 warden gets two extra secretaries and the captain
19 gets an extra clerk. Redeploying staff means

20 cutting positions and shifting them up to CDC

21 headquarters.

22 MR. YORK: Cameras as an additive to what

23 we have makes it available to me being understaffed

24 to do my job plus see something that I can't see by

25 myself.

1 MR. MCFARLAND: I am just thinking of what
2 we saw in the gymnasium here at CPS-SAC.

3 MR. SEXTON: I would think that cameras
4 would also be an additive safety effect for your
5 officers. If something happens, you have a document
6 for a criminal charge.

7 MR. YORK: For court cases.

8 MR. MCFARLAND: Mr. York said it, it would
9 protect both parties. I am just thinking about that
10 setting, 135 men triple bunked in that gymnasium.
11 Right now those three officers, only three officers,
12 are standing at one end of the office, the showers
13 to the left, which is a good line sight, but they
14 haven't a clue what is going on in the rest of the
15 gymnasium unless they happened to make something out
16 from 75 yards away in those concave mirrors.

17 MR. YORK: I would like to address that.
18 At one time we had the gym fully staffed. In the
19 back of the gym there is, like, a sally port where

20 an officer sit and viewed the overall picture, and
21 he was armed with a gun, given this is Level 1 and
22 Level 2. When you are outnumbered by 200 to 3-, 250
23 to 3-, a camera would not do you any good. It would
24 pick up maybe something that you can't see. But
25 when it comes to danger, a camera doesn't protect

1 you in that manner. So, therefore, that is why I
2 say understaffing is a problem.

3 MR. MCFARLAND: I think you both indicated
4 that it does have a prophylactic effect.

5 MR. BAUMANN: Background, your earlier
6 question concerning redeployment of staff. If it
7 means -- my facility, the facility holds 1,480
8 inmates, and that is 14, 15 officers, tops. When
9 you start talking about pulling one of those
10 officers to park his butt to watch a camera all day
11 versus going out there and doing clothed body
12 searches, doing searches around institutions,
13 observing inmates.

14 MR. SEXTON: According to the union, what
15 are the average staffing to inmate ratio?

16 MR. BAUMANN: Well, on paper, budgetarily
17 it is 8.39 to 1, the last I saw, but that doesn't
18 take into account shifts. It doesn't take into
19 account vacation and sick time.

20 MR. SEXTON: I am assuming you have that

21 data. What is the reality?

22 MR. BAUMANN: It varies from institution

23 to institution and shift to shift and day of the

24 week to day of the week.

25 MR. MCFARLAND: Do they include

1 noncustodial staff?

2 MR. BAUMANN: Just custodial staff.

3 MR. SEXTON: Is it close to the eight to
4 one?

5 MR. BAUMANN: God, no. When you start
6 breaking it down in a place like CSP-SAC, you're
7 probably running 40 to 1 on the floor.

8 MR. YORK: Yes.

9 MR. BAUMANN: Somewhere in there. Others
10 are running 200 to 1 on the floor. Whenever you go
11 to a gymnasium, they are running 120 in the gym with
12 one officer on the floor. And now they're adding a
13 camera. There is no place to pull anybody there to
14 sit down and watch them all day.

15 MR. MCFARLAND: Does the union provide a
16 representative for an officer who is accused of
17 sexual assault?

18 MR. BAUMANN: Yes, we do.

19 MR. MCFARLAND: Does the union provide

20 that representative for an officer who has witnessed
21 or allegedly witnessed or is a person of interest in
22 a sexual assault?

23 MR. BAUMANN: If needed, yes.

24 MR. MCFARLAND: Are those the same
25 representatives or separate?

1 MR. BAUMANN: Separate.

2 MR. MCFARLAND: Do each of those union
3 representatives share with the accused correctional
4 officer, the alleged aggressor in the case of a
5 sexual assault, the statements of the witnesses?

6 MR. BAUMANN: My understanding is no
7 because that is attorney-client privilege and
8 generally the shop steward wouldn't handle that type
9 of representation.

10 MR. MCFARLAND: The union representatives
11 are attorneys?

12 MR. BAUMANN: No, no, no. We have two
13 levels. We have attorneys and shop stewards. A
14 shop steward, because they are a peace officer,
15 cannot be involved in any sort of a legal proceeding
16 or legal criminal investigation. So the minute they
17 start criminal investigations, we excuse ourselves
18 out of it and call the office to get an attorney.

19 MR. SEXTON: If it is an Internal Affairs

20 complaint, you receive copies of the allegations,

21 don't you?

22 MR. BAUMANN: I do not.

23 MR. SEXTON: I'm sorry, let's back up. If

24 it is internal, I think citizens complaint.

25 MR. BAUMANN: Administrative.

1 MR. SEXTON: If it is administrative
2 level, the officer and his lawyer receive any copies
3 of the report that are generated or statements made
4 by the inmate; is that correct?

5 MR. BAUMANN: Depending on the point in
6 time. If it is proceeding through the formal legal
7 process, yes. If it is proceeding to the
8 disciplinary process, yes. During the fact
9 gathering portion of the investigation, not
10 necessarily.

11 MR. SEXTON: That is if it is going to
12 become a criminal investigation?

13 MR. BAUMANN: At the point in time it --

14 MR. SEXTON: As long as it stays
15 administrative, they get it.

16 MR. BAUMANN: No, no, no. If it is an
17 administrative inquiry, an Internal
18 Affairs-administrative inquiry, they are not
19 obligated to surrender the documents until the time

20 it becomes a formal discipline.

21 MR. SEXTON: If they are going to have it,
22 the officer will receive some form of hearing --

23 MR. BAUMANN: Correct.

24 MR. ELLIS: -- they will receive any and
25 all documentation that is to be used in that

1 hearing?

2 MR. BAUMANN: To substantiate the
3 allegation. And oftentimes investigators' notes are
4 not included. Things that are not used in the
5 actual discipline itself are not provided.

6 MR. SEXTON: That is per Police Officers
7 Bill of Rights?

8 MR. BAUMANN: Correct.

9 MR. MCFARLAND: Gentlemen, is there a code
10 of silence among correctional officers when it comes
11 to sexual assault or sexual misconduct by an
12 officer?

13 MR. YORK: Absolutely not.

14 MR. BAUMANN: Not that I have ever seen.
15 Like I say, anyone that compromises themselves, at
16 that level could compromise me or anybody else that
17 works at the institution.

18 MR. MCFARLAND: Wouldn't an officer be at
19 risk of being known as disloyal or snitch if he

20 turned in his buddy?

21 MR. BAUMANN: I had a case where a
22 supervisor sexually assaulted a female employee on
23 graveyard in uniform under color of authority. I
24 couldn't get the investigators to pick it up, to do
25 anything with it. Just sent the female employee to

1 the Highway Patrol to get them to take the report
2 and push the issue. I got death threats out of it.
3 They finally, whenever the Highway watch commander
4 called, the investigator had threatened the
5 investigator for obstruction of justice. They went
6 ahead and arrested the supervisor. He was
7 subsequently prosecuted and convicted of the case,
8 now.

9 MR. MCFARLAND: Who were the death threats
10 from?

11 MR. BAUMANN: From friends of the
12 supervisors.

13 MR. MCFARLAND: What about the culture at
14 CSP-SAC, we have heard folks talk about the damaging
15 effect of a sexualized culture. How would you
16 describe the attitude of your average CO at
17 Sacramento about sexual jokes, epithets, references?

18 MR. YORK: I think CSP-SAC is unique. I
19 don't know why. I think it is because we have so

20 many programs that are demanding on us, that we get
21 educated in all fields over there. Our
22 professionalism at CSP-SAC is extremely high.

23 The joking, we take a lot of sexual harassment
24 classes. We know it is a serious thing. I have
25 worked on the floor, down in the trenches for almost

1 20 years. Are there some jokes? Sure, there is
2 some jokes. There is jokes in every aspect of life.
3 But do we take our job seriously? Yes. Do we want
4 to keep our paycheck? Yes. To keep our paycheck do
5 we continue these actions? No. And that's -- they
6 know that. They know that we are serious about
7 this. If we were to see a rape, we turn it in. We
8 would react to a situation. That's how we are
9 programmed at SAC. I'm very proud of SAC. I can't
10 speak highly enough of CSP-SAC.

11 MR. MCFARLAND: Is Sacramento exceptional,
12 in your experience?

13 MR. YORK: I think that professionalism is
14 exceptional, and I worked Vacaville before. That
15 was back almost 18 years ago, and at that time we
16 didn't know about the mental illness. We were just
17 treating everybody as a warehoused person. And from
18 my time when I came into the Department compared to
19 the time now, it is so highly -- I put people

20 extremely high on the educational list,
21 professionalism list compared to when I came in. We
22 have evolved into a good program, and it is going to
23 get better.

24 MR. MCFARLAND: Sheriff.

25 MR. SEXTON: No, sir.

1 MR. MCFARLAND: Gentlemen, any final
2 comments on your part?

3 MR. BAUMANN: I have one real quick. Just
4 remember culture. It starts from the top. We have
5 case after case with female employees having to file
6 litigation against the Department to refer inmates
7 assaulting female staff to the District Attorney for
8 prosecution. We had a case recently in Pelican Bay
9 where the female employees had to file suit to get
10 an inmate disciplined for masturbating at them.

11 Culture starts at the top, not at the bottom.

12 Thank you.

13 MR. SEXTON: Let me ask you a question.
14 Pelican Bay has mainly lifers?

15 MR. BAUMANN: Yes, sir.

16 MR. SEXTON: And the masturbation charged
17 sexual impropriety. That could be misdemeanor?

18 MR. BAUMANN: Yes, sir.

19 MR. SEXTON: How will that affect a lifer?

20 MR. BAUMANN: Absolutely nothing. But you
21 still have tons of administrator remedies from
22 taking someone's commissary canteen, restricting
23 their phone access. So on and so forth. There is
24 more than one way to skin a cat.

25 MR. SEXTON: That can be done through

1 administrative charges. When you say filing
2 charges, I'm assuming that is criminal.

3 MR. BAUMANN: Two issues. One issue is
4 the female staff, youth authority, being groped by
5 wards who are not doing life. Many who are over 18
6 and not being referred to the District Attorneys.
7 The inmates at Pelican Bay masturbating at the
8 female employees not being disciplined in any way
9 whatsoever. No administrative discipline against
10 the inmates at Pelican Bay.

11 MR. SEXTON: Maybe I don't understand what
12 you're saying in regard to the lawsuit. There
13 wouldn't be a criminal action, normally
14 administrative action.

15 MR. BAUMANN: Exactly.

16 MR. SEXTON: I am with you now. I
17 misunderstood.

18 MR. MCFARLAND: One other question. Would
19 you object to having an outside rape counselor

20 coming into prisons?

21 MR. BAUMANN: Personally, I prefer it.

22 MR. MCFARLAND: If it replaced union

23 members on staff?

24 MR. BAUMANN: I doubt that you would have

25 enough work at most of the institutions for a

1 full-time employee, anyway. So you probably have to
2 do it on a contract basis. So it is not going to
3 displace any of my people.

4 MR. MCFARLAND: I am saying what if on a
5 voluntary basis the local rape crisis centers were
6 allowed to send in counselors rather than -- that
7 replaced some of your staff, your paid staff, who
8 are presently your mental health counselors, would
9 that be a problem for you?

10 MR. YORK: The only thing that I would
11 --anytime you get outside people that have not
12 worked in the system, it is a unique environment.
13 They --

14 MR. MCFARLAND: There would be a ramp-up
15 period.

16 MR. YORK: It would take a long ramp-up
17 period. The cases that we do have that I have seen
18 sexual misconduct and stuff, it is because outside
19 people come in and do not realize where they are at.

20 When they come into our institutions and imagine
21 there is a man in a cell, he's done wrong. We are
22 not punishing him. We protect both staff and him,
23 and we have seen people fall in love. They forget
24 where they are at.

25 So the only concern I would have on outside

1 people is the preparedness. I have no question they
2 are capable of being counselors, just the capability
3 of handling the situation, where it's at.

4 MR. MCFARLAND: The idea of their being
5 some union member, mental health counselor on staff
6 losing their job in favor of these outsiders doesn't
7 bother you?

8 MR. BAUMANN: We don't represent them
9 anyway as it is right now. I'm straight with my
10 garbage, who we are representing, to begin with, and
11 they are. Right now we have such a shortage of any
12 kind of mental health staff as a department. We
13 have a beautiful 1,500 bed mental health facility in
14 Coalinga that is sitting there with 200 inmates that
15 the Department can't hire enough people. The State
16 cannot hire enough mental health providers.

17 MR. MCFARLAND: Thank you, gentlemen,
18 again for your time.

19 MR. BAUMANN: Thank you.

20 MR. MCFARLAND: We will just have some
21 closing remarks from the panel, and then conclude.

22 Mr. Sexton.

23 MR. SEXTON: I will forego my comment.

24 MR. MCFARLAND: Carroll, Ms. Ellis.

25 MR. ELLIS: I think my comments certainly

1 center around sincere appreciation for your
2 cooperation, your patience, your willingness to come
3 forward and to share information, certainly to those
4 people who testified. We have gleaned from you a
5 great wealth of knowledge to take back to help us in
6 this amazing job that we have.

7 I have heard a lot of terms. I have heard
8 continuity that I like to hear. And from that I
9 have determined one of your terms nonmalfeasance.
10 First, do no harm. I have heard a lot about
11 communication, a great deal about respect and the
12 importance of respect and what it means. Respect
13 means curiosity. Respect means wanting to know,
14 being curious about someone. Is an indication of
15 respect for someone.

16 Caring witness. I have heard a lot about
17 caring witness, actually listening, taking the time
18 to listen, to understand what people are saying. I
19 have heard a lot about empowerment as it relates to

20 inmates, which translates, for me, to human dignity,

21 restoring human dignity. This it is important.

22 I have heard a lot about professionalism, and

23 I certainly have seen that in my stay here with the

24 staff who's been so gracious and so open in shedding

25 light on corrections. Certainly for me, someone

1 that comes as a stranger to a strange land. I can
2 say also that respect also has to do with being in
3 the moment, with being completely committed and
4 devoted to the issue. And I certainly have seen a
5 great deal of that.

6 I recognize that there is overcrowdedness;
7 there are physical aspects. There are issues that
8 are causing the problem that we are trying to look
9 at. There is always hope, and there is also the
10 power of relationships which I think is so very
11 important, and for that I scribbled down -- if I can
12 find it -- one of my favorite quotes that I would
13 like to share with you in closing.

14 We cannot live only for or by
15 ourselves. A thousand fibers connect
16 us with each other, and along these
17 fibers as sympathetic threads our
18 actions run as causes and they come
19 back to us as events. (Reading)

20 So I will say to you that it is my pleasure to

21 learn from you. Thank you very much.

22 MR. MCFARLAND: I want to join the other

23 panel members in thanking each of the witnesses. I

24 think we made a good choice of coming to CDCR,

25 California, with its 2005 state PREA law, with its

1 commitment to the training, four-hour training that
2 we heard about. In contrast to what we see in the
3 NIC study released last year that says little or no
4 training in sexual assault in most prison systems.

5 This tells me that CDCR is definitely on the
6 right track. The implementation manual that Ms.
7 Hardy is just finalizing and about to distribute.
8 We are anxious to see that in our hands. They're
9 ahead of the country in that regard. Contracting
10 with people like Prof. Owen to examine sexual
11 violence in women's facilities. Working with the
12 Moss Group and others. And also I was impressed by
13 Mr. Dovey's efforts evidently to motivate District
14 Attorneys to prosecute. They seem to not find that
15 very important.

16 Without prejudging anything that any panel
17 might say, I think there are some areas for
18 improvement, actually. We have heard a lot about
19 the dangers of punishing the victim, sending the

20 sexual abuse victim rather than just the accuser to
21 ad seg. Something that seems to still being done
22 here. That is a problem. Seems to be a breakdown
23 on communication between the sheriffs' offices and
24 the prison system in terms of what kind of
25 information, if any comes. As one witness said, it

1 is hit or miss. Love to see some of the factors
2 Mr. Dumond mentioned that determine vulnerability be
3 a regular, indispensable aspect of paperwork that
4 comes with, not 90 days later, but with the new
5 admittee, the entire file or her medical file, their
6 sexual orientation if it's been discussed, any
7 history of abuse. They would seem to be
8 indispensable information for prevention. And
9 everybody seems to say that prevention is a lot
10 easier and better than focusing on prosecution after
11 the fact.

12 Seems to me that CDCR may need to work a bit
13 more after action review, learning lessons, doing
14 postmortems on sexual assault, finding out where the
15 system broke down. The outside investigations of
16 sexual assaults has been a recurring area of
17 interest that the Department might want to consider.
18 Cameras seem to be cheaper than staff and cheaper
19 than two or three COs escorting somebody to a rape

20 center for eight to 12 hours. Nobody seems to have
21 a real reason why that technology wouldn't be a good
22 idea.

23 Everybody mentioned overcrowding, and that is
24 obviously something for the Legislature to wake up
25 to. And to the extent that was alleviated, that

1 would cut down on blind spots.

2 Improve classification and housing options
3 rather than just filling whatever few beds might be
4 available in the gym. And we have heard a lot about
5 need for confidentiality reporting. There seems to
6 be a conflict between who you can trust and what is
7 expected of the employee to report a felony.

8 Finally, there are mixed reviews about the
9 zero tolerance policy that is espoused concerning
10 sexual harassment and epithets versus the apparent
11 lack of anybody being able to recall anybody being
12 disciplined or prosecuted. So I just throw those
13 out as very preliminary compliments and points of
14 concern, for whatever they are worth. Nothing that
15 I have had the pleasure of collaborating with on.
16 These are just some initial observations.

17 And, again, we appreciate very much your
18 contributions. And as for your follow-through on
19 the various documents and promise that have been

20 made, and we will always be open to any additional
21 information that you want to provide. In that sense
22 the report remains open if you want to supplement,
23 rebut or respond to anything you said or heard.

24 With that, unless anything else to be said, we
25 are in adjournment.

1 Thank you very much.

2 MS. ELLIS: Thank you.

3 MR. SEXTON: Thank you.

4 (Hearing concluded at 4:45 p.m.)

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