

UNITED STATES DEPARTMENT OF JUSTICE

OFFICE OF JUSTICE PROGRAMS

HEARING ON SEXUAL VIOLENCE

BY THE REVIEW PANEL ON PRISON RAPE

TUESDAY, NOVEMBER 14, 2006

9:00 A.M.

FOLSOM STATE PRISON - LARKIN HALL

CALIFORNIA

REPORTED BY:

ESTHER F. SCHWARTZ

CSR NO. 1564

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ATTENDEES

REVIEW PANEL:

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

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WENDY STILL, ASSOCIATE DIRECTOR
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ANTHONY MALFI, WARDEN
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MATTHEW KRAMER, WARDEN

FOLSOM STATE PRISON

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PANEL 2:

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MORRIS THIGPEN, DIRECTOR

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NATIONAL INSTITUTE OF CORRECTIONS

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ATTENDEES

PANEL 3:

RODERICK HICKMAN, FORMER SECRETARY
CALIFORNIA DEPARTMENT OF CORRECTIONS
AND REHABILITATION

LORIE BRISBIN, COORDINATOR
PRISON RAPE ELIMINATION
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PANEL 4:

THOMAS CLINTON, (SURVIVOR)

KATHY HALL-MARTINEZ, CO-CHAIR
STOP PRISONER RAPE

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1 CALIFORNIA STATE PRISON - SACRAMENTO

2 TUESDAY, NOVEMBER 14, 2006, 9:00 A.M.

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4 MR. MCFARLAND: Good morning. My name is
5 Steve McFarland, and it is my privilege to welcome
6 you to the first public hearing of the Review Panel
7 on Prison Rape. I have the pleasure of, I guess,
8 informally chairing the panel. I am with the Office
9 of the Deputy Attorney General of the U.S.
10 Department of Justice and direct their task force on
11 Faith-Based and Community Initiatives. I also chair
12 the Attorney General's working group on prison
13 reentry.

14 To my right is -- let me introduce the other
15 two distinguished panelists: Carroll Ann Ellis of
16 Fairfax County, Virginia, a very experienced
17 professional in the area of victim services, victim
18 trauma, crime victim, and brings a great deal of
19 sensitivity and understanding and personal

20 experience in that area.

21 Then we have Sheriff Ted Sexton, immediate
22 past president of the National Sheriffs Association
23 and the recently re-elected Sheriff of Tuscaloosa
24 County, Alabama.

25 I want to thank the California Department of

1 Corrections and Rehabilitation, Secretary Tilton,
2 Warden Malfi, Warden Kramer here at Old Folsom. I
3 want to thank Ms. Nancy Hardy and Ms. Judy Roark,
4 Lt. Bob Trujillo, Lt. David Foot and the other
5 employees of the Department who have been so helpful
6 in making accommodations, providing the venue and
7 accommodating our better understanding of the
8 physical layout here at Old and New Folsom and also
9 our understanding of the questions at hand.

10 I want to thank Michael Alston, Kathleen
11 Severens and George Mazza and Helen Mathis of the
12 Department of Justice who have been very, very
13 helpful and instrumental in setting all of this up
14 for the panel.

15 And the tour yesterday was very helpful. And
16 I want to thank them for their accommodation in that
17 regard.

18 The purpose and charge of this panel is set
19 out in the Prison Rape Elimination Act of 2003, as

20 being to carry out public hearings concerning the
21 operation of the three prisons with the highest
22 incidence of prison rape and the two prisons with
23 the lowest incidence of prison rape in federal,
24 state, county and municipal prisons. So the purpose
25 of our hearing today is to identify the common

1 characteristics of not only victims and perpetrators
2 of prison rape, but also those prison and prison
3 systems with the highest incidence of prison rape
4 and those that have been successful in deterring
5 prison rape.

6 We are here to listen and not to talk, so none
7 of the Panel Members have long speeches. None of us
8 are running for office, so we don't need to be
9 heard. So let me just make one disclaimer before I
10 turn it over to the other panel members just to
11 greet you. That is that we chose to come here to
12 the CDCR not because that they have been -- not
13 because they have been ranked the best or the worst,
14 but because they are the largest state prison system
15 and because California has had the foresight to
16 enact legislation of its own in this area.

17 So in no way should our presence here be
18 misinterpreted as suggesting that the California
19 prison system is under investigation or scrutiny.

20 That is neither the role of this panel nor should it
21 be -- nor do we have any basis for choosing CDCR
22 over any other any other system, because it is not
23 our task to do any ranking. That will be done by
24 the Bureau of Justice Statistics and the Department
25 of Justice. We are grateful for CDCR's

1 accommodation and for the light they can shed on the
2 issue.

3 Let me just make three requests. If you have
4 submitted written testimony, you need not feel
5 obligated to read it all. We have read everything
6 that has been submitted. So you can just choose
7 what you share verbally, and the more time you leave
8 for questions the better.

9 Second request would be that you would define
10 any acronyms and any correctional buzz words.
11 Assume that I don't know. Ted and Carroll maybe
12 will know, but other than DOJ and CDCR, if you drop
13 any acronyms without telling us what you are talking
14 about, we may miss something. Around my house my
15 wife does not permit intertable conversation with
16 any other acronyms other than DOJ.

17 And the third request would be that the more
18 specific and the more direct and simple the better.
19 And I can say this being a lawyer, less lawyerly

20 generalities and obtuse comments. Say what you mean
21 and mean what you say. That would be very helpful.
22 And before I administer the oath and call for the
23 first panel, let me turn it over to Panel Member
24 Carroll Ellis.

25 MS. ELLIS: Good morning. Your presence

1 here is a testament to your commitment to this very
2 serious issue. And to that end I salute you. I am
3 pleased to be here. I am honored to be here, to be
4 a part of this important panel, and I look forward
5 to our discussion this morning. As for the
6 acronyms, have no fear. I am not insulted if you
7 talk to me like I am six years old. So I appreciate
8 your being explicit and breaking it down.

9 We have been supported. We have been
10 educated, and I want to add my thank you to Steve,
11 to everyone involved. So far it's been an amazing
12 journey. I look forward to your continued support
13 and cooperation. And again thank you, and I am
14 pleased to be here.

15 MR. SEXTON: Thank you. It is an honor to
16 be here. I look out and see some faces that I know.
17 Mr. Morris Thigpen from Alabama.

18 I am here to listen. I think everything has
19 already been covered and I look forward to what you

20 say and to answer questions.

21 Thank you.

22 MR. MCFARLAND: With that, let me call
23 forward the first panel: Mr. John Dovey, Director of
24 CDCR's adult institutions; Ms. Wendy Still,
25 Associate Director of Adult Institutions of CDCR;

1 Nancy Hardy, who I already mentioned and thanked,
2 corrections administrator and lead person as I
3 understand for PREA in CDCR; and the warden here at
4 the New Folsom or California State Penitentiary at
5 Sacramento, Mr. Anthony Malfi.

6 If they would come forward, I will administer
7 the oath.

8 (Oath administered by Mr. McFarland)

9 MR. MCFARLAND: I understand that
10 Mr. Dovey has been detained for another five minutes
11 or so. With that, we will start with Ms. Still.

12 Thank you very much.

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PANEL 1

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MS. STILL: Thank you very much.

4

Hello. My name is Wendy Still. I would like

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to thank the Panel for the opportunity to provide

6

testimony on the very important issue of in-custody

7

inmate safety and the systemic changes that the CDCR

8

has made to eradicate in-prison sexual violence.

9

In my current --

10

MR. MCFARLAND: Excuse me. Can you all

11

hear back there?

12

MS. STILL: In my current assignment I am

13

the Associate Director for the Female Offender

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Programs and Services providing oversight and

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overall program management for the 11,800 adult

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women felons housed in four prisons, three

17

conservation camps and one community correctional

18

facility and five mother and children community

19

correctional programs.

20 I have also had the responsibility of being
21 executive project sponsor for the Prison Rape
22 Elimination Program for the California Department of
23 Corrections and Rehabilitation. This responsibility
24 included developing CDCR's strategy for complying
25 with the 2003 Prison Rape Elimination Act and

1 working with the California Legislature by providing
2 input through our legislative office related to the
3 development of AB 550, Sexual Abuse in Detention
4 Elimination Act, sponsored, and actually authored by
5 Assemblywomen Jackie Goldberg, and developing and
6 implementing the compliance plan with this new law.

7 As a first step, the Department created the
8 Prison Rape Elimination Committee which held its
9 first meeting in March 2005. This committee was
10 designed to include internal stakeholders from the
11 field and headquarters as well as external
12 stakeholders, which included Stop Prison Rape, Kathy
13 Hall-Martinez, and several individuals from Stop
14 Prison Rape, Dr. Val Jenness, University of
15 California at Irvine, lead researcher, and Dr.
16 Barbara Owen, PREA expert, Fresno State University,
17 warden, legal staff, institutional staff and
18 investigative policy reps from various areas and
19 trainee staff.

20 During the initial meeting, tasks for the
21 committee were discussed. Some of the items
22 included: preparing a zero tolerance policy
23 statement from our agency secretary for Department
24 wide dissemination to all employees, collecting and
25 reviewing all current policies regarding sexual

1 misconduct and utilize those to develop a statewide
2 standard, determining whether the classification
3 systems needs to be modified to consider risk
4 factors and detection of predators and victims,
5 ensure inmate accessibility to the hot line for
6 reporting of in-custody sexual assault/rapes,
7 housing and programmatic needs, appeals process,
8 medical and mental health treatment concerns,
9 confidentiality and reporting process, training and
10 orientation for both staff and inmates, inmate peer
11 education, intervention and rehabilitation, and
12 prosecution and accountability for violations of
13 policy.

14 The initial meeting of CDCR Prison Rape
15 Elimination Committee began the process of promoting
16 collaboration among individuals, organizations and
17 agencies within the prison system and the community.
18 Also during this initial committee meeting a project
19 manager was assigned.

20 I think it is worth taking a moment here to
21 stop and talk about this committee. We have formed
22 two committees at the time. One was on PREA and one
23 was a gender response strategies commission; and
24 this was a really big step for the Department
25 because it had been pretty much a closed Department.

1 We hadn't reached out to experts beyond our walls,
2 so to speak, and ask them historically to come
3 partner with us, and as such you can imagine the
4 problems that we realized. We didn't have the
5 experts that we needed to really fully form our
6 programs.

7 So at the time we reached out and we got those
8 experts, and it made a huge difference. It opened
9 our world. We thought of issues that we wouldn't
10 have necessarily thought of and brought expertise to
11 the table that really helped form our program.

12 As we moved through the initial phase of
13 developing the project, we were in contact and
14 received very positive support from the National
15 Institute of Corrections, specifically Director
16 Morris Thigpen and Dee Halley.

17 The Department submitted several requests for
18 technical assistance to the National Institute of
19 Corrections which were all generously approved. The

20 Moss Group and specifically Andie Moss' assistance
21 was invaluable. The Moss Group provided assistance
22 related to the review of the Department's Prison
23 Rape Elimination Program, including the policy and
24 protocols. They also put together an expert team to
25 conduct the review and provide written feedback

1 which was incorporated to policies and procedures.

2 We were also very fortunate that Dr. Barbara
3 Owen, who is a PREA expert and also an expert on our
4 gender responsive program, female gender reform
5 initiative, was available for ongoing consultation.

6 Additionally, in early 2004, the CDCR applied
7 for and was awarded a federal grant under the 2004
8 Protecting Inmates and Safeguarding Communities
9 discretionary grant program. These grant funds were
10 used for two projects. The first one to complete a
11 research project assessing violence in prisons with
12 a specific emphasis on sexual assault and rape. The
13 project was initially designed to assess the adult
14 male population. Very early in the project, as a
15 matter of fact, it was after the federal hearing in
16 San Francisco where it became really clear to me
17 that we needed to include the transgender population
18 in our study, a modification to the contract was
19 made to include surveying of the transgender

20 population as part of the research population. The
21 project is close to completion. All data collection
22 and validation has been completed. The data
23 analysis phase has begun. It is expected that
24 Dr. Val Jenness, U.C. Irvine, a main researcher on
25 the project, will have a written report completed in

1 spring 2007.

2 The second was to provide a partial funding
3 for the development of a standardized curriculum
4 which will include a sexual assault prevention
5 component of inmate peer education program. In
6 January 2006, we assessed our progress on improving
7 offender safety and eliminating in-custody sexual
8 violence. There was an important element that was
9 missing, and it was really the detention components.

10 NIC and the Moss Group hosted a western
11 conference meeting in Arizona where all the states,
12 western states, came together, including jails and
13 corrections, and it was very helpful. They provided
14 information to us relative to what the other states
15 were doing. And from that we identified that we
16 wanted to add a component to our program that we
17 would study the impact of putting cameras into our
18 institutions. We subsequently were awarded, in
19 February 2006, we applied for and were awarded a

20 federal grants under the 2006 Protecting Inmates and
21 Safeguarding Communities discretionary grant
22 program.

23 These grant funds have been earmarked to
24 develop a pilot program at three institutions, adult
25 male institution and adult female institution and a

1 female juvenile facility. The pilot program will
2 place cameras and recording equipment in one
3 facility in each of the three institutions and
4 require comparison with the remaining facilities at
5 each respective institution. The cameras perform
6 dual roles: one to detecting and reporting
7 information that will assist in prosecution of
8 cases, and two to prevent inappropriate sexual
9 misconduct from occurring within an area because of
10 the camera recording equipment.

11 In response to question No. 2, I think I will
12 hold that for a moment, and our Director has joined
13 us, and so perhaps we would have the Director
14 provide his testimony and he will also be responding
15 to question No. 1.

16 MR. MCFARLAND: Good morning, Mr. Dovey.

17 MR. DOVEY: Good morning. My apologies
18 for my entrance.

19 MR. MCFARLAND: I realize this is not the

20 only thing you have to do. We are very appreciative
21 of your time and written testimony already
22 submitted. I wonder if you will please raise your
23 right hand and let me swear you in.

24 (Oath administered by Mr. McFarland)

25 MR. MCFARLAND: Mr. Dovey, the floor is

1 yours.

2 MR. DOVEY: My apologies for being late.

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

16 MR. MCFARLAND: So do we.

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

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

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

1 closer. That would be great.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20 inmates.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20 seen that in the past.

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

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

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

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

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

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

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

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

20 we are doing.

21 Policy review and training curriculum

22 committee should be created to ensure continuity

23 between new policy and revised curriculum. Training

24 lesson plans should be well defined and clearly

25 outline expectations for compliance with the policy,

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

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

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

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

19 MR. DOVEY: I am subject to being called

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

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

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

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

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

8 MS. STILL: Thank you.

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

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

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

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

25 During the investigatory process thought

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

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

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

20 likely barriers to reporting accurately an accurate

21 investigation and deterring prison rape?

22 The barriers we found include the victim's

23 embarrassment of reporting an incident, inmates

24 belief that the report will not be taken seriously,

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

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

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

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

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

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

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

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

10 MR. MCFARLAND: Thank you.

11 Ms. Hardy.

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

20 program at this point.

21 Through the process that we have gone through
22 we brought a group of subject matter experts from
23 the field, investigative staff, health care staff,
24 line staff. We had several folks, policy folks, and
25 attorneys from headquarters, labor relations. All

1 were part of our subject matter group that sat down
2 and looked at a lot of the policies that we had
3 collected from institutions, our own institutions,
4 but other institutions. We looked at Texas, Ohio
5 and a couple other states to try to put together a
6 comprehensive program that would fill all of the
7 needs for the Department.

8 We developed the operational procedure, the
9 policy itself, and a group of checklists that would
10 make it simple for the staff when an incident
11 occurred to follow a checklist, to assist them in
12 going through the process. This entire package went
13 through a vetting process and received internal and
14 external stakeholder review.

15 We received comments from external
16 stakeholders, including the Moss Group and Stop
17 Prison Rape. We incorporated the comments into the
18 policy, and it moved forward, and the policy was
19 approved in January 2006.

20 A training lesson plan was developed. It is a
21 four-hour lesson plan, and it does have the use of
22 the two NIC videos. And we also put a PowerPoint
23 with all the checklists and everything to go along
24 with it. And that training plan is currently being
25 used to train our staff.

1 We went through the negotiations process with
2 our required employee organizations and completed
3 that, and training began for managers and
4 supervisors in May of 2006, and it started with the
5 line staff in June of 2006 with an anticipated
6 completion date of June of 2007.

7 At this point in time the implementation memo,
8 I do have it back signed by our agency secretary,
9 and we are putting packages together to be sending
10 out to the field so they will have complete binders
11 with all the information, including training
12 materials that they already have, but there is
13 additional information that we will be providing to
14 them. We are hoping to have all of that out to the
15 field before December the 1st.

16 I have question No. 3 which was: Which staff
17 positions in such a system would be key witnesses?

18 We believe that predominantly these would be
19 correctional officers and other inmate work

20 supervisors. Some of those would be teachers,
21 supervising cooks and trades personnel, medical and
22 mental health staff, investigative staff, both in
23 institutions and from our Office of Internal Affairs
24 and management staff.

25 This concludes my written testimony. And once

1 again I would like to thank you for the opportunity
2 to testify.

3 MR. MCFARLAND: Thank you, Ms. Hardy.
4 Thanks for all the time you put into accommodating
5 us.

6 MS. HARDY: You're very welcome.

7 MR. MCFARLAND: Warden Malfi, thanks so
8 much for being with us and for your gracious
9 hospitalities that you and your staff have shown. I
10 extend the same to Warden Kramer. Thank him for
11 showing us around last night and hosting our
12 hearing.

13 And, Warden Kramer, if there is anything you
14 would like to add spontaneously, we would be honored
15 and delighted.

16 WARDEN KRAMER: Thank you for the
17 opportunity.

18 MR. MALFI: Good morning. Prior to me
19 giving my testimony, I would like to let you know

20 that behind every good administrator are support
21 staff and most of us have administrative assistants,
22 Judy Black and Robert Trujillo did all this. They
23 should be thanked also, and I would like you to know
24 that.

25 My name is Anthony Malfi. I have been with the

1 California Department of Corrections and
2 Rehabilitation for approximately a little over 30
3 years. I would like to thank you for giving me the
4 time to give this testimony before you on inmate
5 safety in the correctional environment and the steps
6 we have taken in an attempt to eliminate prison rape
7 and sexual misconduct in our institution.

8 As the warden at California State
9 Prison-Sacramento, I have the responsibility of
10 overseeing a high security mission. I have
11 approximately 3,200 inmates at my facility. Of
12 those 3,200 inmates, approximately 1,800 are general
13 population inmates. I have currently 350 inmates in
14 administrative segregation. I have 180 inmates in
15 the psychiatric segregation unit. I have 280
16 inmates in the enhanced outpatient program, and I
17 have approximately 640 inmates in Level I and Level
18 II general population. I would like you to also
19 know that my institution is probably one of the

20 largest mental health providers in the state of a
21 maximum security housing of inmates and it is a big
22 mission and a struggle every day.

23 The mission in SAC includes two correctional
24 treatment centers capable of housing 27 inmates in
25 an outpatient housing unit, capable of also housing

1 another 64 inmates. We just recently opened a large
2 mental health facility, a new treatment center,
3 which took many years, and prior to me the former
4 wardens did a fantastic job along with the
5 Department and the Mental Health Department of
6 getting this thing off the ground. I am really
7 happy to say we are getting there. I think we're
8 going down the right road and hope to achieve those
9 goals.

10 Statistics for California prisons in regards
11 to sexual assault show a relatively small number of
12 reported incidents. As Mr. Dovey has stated and Ms.
13 Still, I am willing to bet that there has been
14 people who have probably been assaulted that just
15 don't come forward. I think that that is probably
16 very strong in the community from what I heard and
17 be able to understand. So I think it is probably
18 almost the same in the prison. I think there is
19 probably a stigma attached to it, the prison

20 setting.

21 I also believe, and this is my personal
22 opinion, that the staff really do care. I think
23 people who work for us, sometimes we get this cloud
24 over us that we are in a prison setting and we don't
25 care about people, and I think it's just the

1 opposite. We all have family members. I think we
2 all have people we know, and I don't think anybody
3 would like to see this happen to anybody.

4 I think we have gone to great lengths to put
5 this training out to people. We have approximately
6 1,500 employees at our prison. Roughly about 85
7 percent of them have received at least one hour
8 training to get it going, and we're currently going
9 through the four-hour block training which will be
10 administered over the next year, and hopefully get
11 everybody. With all our supervisors, as far as
12 in-custody division, lieutenants and sergeants have
13 received the training. I think we are making great
14 strides to get this out there.

15 As I stated, in the last four to five years we
16 have received -- we have had approximately 1,400
17 reportable incidents at our prison, very few have
18 had sexual misconduct involved in, very few. It's
19 actually only been three that we have reported. We

20 have had some reportable incidents with staff
21 misconduct, and we have two pending right now which
22 I'd rather not get into great because they are
23 pending investigation. I think it's -- I think we
24 have taken it very serious. I think we have zero
25 tolerance. I think our staff are well aware of it.

1 When we find these incidents, when we are made aware
2 of them, we attack them as quick as we can. And I
3 think, I really believe that this has really come to
4 light in the last few years since this law has been
5 enacted. I think we are doing a pretty good job; I
6 really do.

7 I would also like to bring -- as far as my
8 questions, do you want me to go through them?

9 MR. MCFARLAND: Sure. We do not have any
10 written testimony.

11 MR. MALFI: Screening for appropriate
12 placement. I think we have a pretty good
13 classification system. I think it is a lot harder
14 than people think it is. It's complicated, and a
15 lot of it is based on what we are told by the
16 offender, by the inmate. I think that is very
17 important to note, that people who probably really
18 have never run a prison or sat in classification
19 committees, we have people come before us and we can

20 only go based on what they tell us, and if they
21 don't tell us they're a victim or tell us their
22 lifestyles or tell us -- it makes it really hard.
23 We put these people in positions into the general
24 population setting and it can turn on them.

25 So I think it is also important that people

1 are made aware that they have to be very truthful
2 during classification process. I hope that makes
3 sense to you. I know it is probably a different way
4 of looking at it than most people. It is extremely
5 important that people coming into our systems are
6 made aware that they have to be honest with us. You
7 don't know people's lifestyles. You don't know
8 their preferences in a lot of things, and if you
9 don't know that it makes it very hard.

10 Especially as the Director and Ms. Still said,
11 we are pushed against the wall with the housing
12 buildings. No one wants to put people in
13 gymnasiums. We are forced to. That is another two
14 pages of testimony, probably. And it really creates
15 a problem for us. It really does as far as the
16 security end. Little things like sheets on beds,
17 keeping people safe and constantly watching these
18 type of things.

19 But all inmates received go through a

20 classification system. We try to identify people.
21 We try to identify predators. We try to separate
22 the predators as soon as we hear of any type of
23 behavior like this. The one thing that Ms. Still
24 brought up was very interesting. We do put people in
25 administrative segregation. I think some people

1 might say, "Well, you're penalizing the victim."

2 But in a prison setting that is about the only thing
3 you can do to at least get everybody away from a
4 situation until you can literally investigate it.

5 A lot of times we have people say things that
6 turn out not to be true. They want to get out of
7 the area because they want a transfer, they don't
8 like the housing. There is numerous reasons. So it
9 is really hard sometimes to really boil down the
10 truth, and I think that is a real problem for us to
11 delve through.

12 Training. As I stated, I believe that we have
13 really taken -- my next question, my No. 2, employee
14 training. As I stated, we have a lot of mandates.
15 Sometimes we are -- another area is to get
16 everything done. Used to be when I was a
17 correctional officer, we had about four hours
18 training a year. But now I think we are up to 52
19 hours of mandated training along with CPR and mental

20 health and a lot of mandated training and four hours

21 of this. And then the big word of money.

22 When you start realizing a lot of people have

23 to be paid time-and-a-half, it gets very expensive

24 from a warden's position to get all this done.

25 Sometimes it is hard. It really is. We have had

1 training on CPR, and just recently we've had to do
2 it twice. Mandated through the courts. And to
3 squeeze all of this in gets complicated.

4 I really believe, when you look at the
5 booklets that we receive, the training, as Ms. Still
6 said, we receive a lot of training from federal
7 grants, outside agencies, and I think we are getting
8 there. But it is complicated. It is not simple.
9 You just don't snap your fingers, but I think we are
10 making strides, making a difference.

11 MR. MCFARLAND: Warden, excuse me. Is
12 that 52 hours a year or 52 hours initial academy
13 briefing?

14 MR. MALFI: Oh, no, not to do with the
15 academy. I am talking about annual training for our
16 correctional staff.

17 MR. MCFARLAND: Fifty-two hours a year for
18 all your line staff?

19 MR. MALFI: I know we have training all

20 the time on different subjects. I am sure
21 Mr. Kramer and a lot of other wardens, what we will
22 do periodically is we will try to fit it in in a
23 program in a housing unit, on-the-job training. We
24 will have sergeants and lieutenants go out and give
25 specialized trainings.

1 I also have No. 3, suspect and offender
2 processing. All allegations of sexual misconduct
3 are taken very seriously. Staff has been trained in
4 initial notification, medical treatment,
5 confidentiality, victim and assailant rights,
6 transportation responsibilities, crime scene
7 preservation, evidence collection, investigative
8 process, mental health responsibility and housing
9 determinations.

10 I don't know how well you are aware of, every
11 prison in our Department has what they call an
12 Investigator Service Unit. It is basically like our
13 own detective within our own prison system, our own
14 process. But I think they are very well trained.

15 I think one of the problems that we run into,
16 especially in some of our rural areas in prisons, we
17 have actually transported inmates to local hospitals
18 where they didn't have the sexual assault kits.
19 Their doctors weren't trained. I think it is also

20 some other areas we need to look at, that I would
21 hope we bring the other stakeholders involved in
22 this. Especially in some of the rural counties
23 where this just doesn't happen. Much smaller
24 hospitals, district type hospitals. I can remember
25 on at least two occasions where we took people to

1 hospitals and we have had to literally transport
2 them to bigger cities to have these kits done.

3 I do believe that we are very well trained and
4 I think a lot of people don't realize that our
5 Investigative Services Unit staff are very well
6 trained. I think they do a good job. I really do.

7 Data collection and monitoring. As I stated,
8 investigator service lieutenant reports
9 investigations of allegations of sexual misconduct
10 on their monthly report, including whether a
11 perpetrator was a staff member or offender and the
12 disposition or current status of those cases. As I
13 stated, I think we have at least two current cases
14 at my prison. One was not sustained where it was an
15 inmate accused another inmate of sexually assaulting
16 him. We have at least two that I can recall off the
17 top of my head of employee involved misconduct.

18 I think another area that needs to be spoken
19 to is the cooperation from the District Attorney. A

20 lot of District Attorneys, for whatever reason,
21 don't take these cases up, and it makes it really
22 difficult for us. I think it is a strong deterrent
23 if we can get them to go that way. But I think we
24 make it very clear that we have zero tolerance, and
25 I think we are doing a good job in California. I

1 really do.

2 I hope that answers your questions.

3 MR. MCFARLAND: Thank you. We want to
4 thank each of you for all the time you put into your
5 testimony. I think all of us have a lot of
6 questions to ask.

7 Let me just give it off to Warden Kramer.

8 Would you like to add to the mix, if so I will swear
9 you.

10 (Oath administered by Mr. McFarland)

11 MR. MCFARLAND: Thank you as well for your
12 hospitality, for providing the venue and education.

13 MR. KRAMER: Thank you for the opportunity
14 to give you a tour of Folsom Prison last night. As
15 you can tell from the facility, it does present a
16 somewhat unique challenge in a number of areas,
17 including the sexual misconduct area, as you saw
18 from viewing some of the cells and the staffing that
19 we have. And I'll just take a few minutes.

20 I would like to reiterate some of the points
21 that Warden Malfi brought up. As far as the
22 challenges, I think the headquarters staff, as the
23 Director pointed out and Ms. Still pointed out, the
24 training program that we are receiving, the training
25 program that we are rolling out has been very well

1 received. The training material has been very
2 helpful in educating the staff. Also putting
3 information up in the housing units. I think you
4 had an opportunity to observe yesterday the posters
5 that are in the units, that were up in the ad seg
6 facility that you went by.

7 I think the challenge that we are having is
8 just the number of inmates and observations of the
9 inmates, getting the reports as we need to get them
10 as currently and as quickly as we can, and then
11 taking the information forward and taking the
12 information, as Warden Malfi pointed out, up to the
13 District Attorneys and getting the reports and
14 getting prosecution.

15 One of problems we are having when we get into
16 the area of coming forward and the like, SAC at
17 Folsom we have about 4,000 inmates. In going back
18 to the files we have had two active cases under
19 PREA, and we had about five or six under the sexual

20 misconduct. With the problems that we face in both
21 these areas in rolling out the programs, having the
22 staff trained on what actions to take and then
23 making sure we follow through is our challenge as
24 management in this area.

25 The cases that we have had on the sexual

1 misconduct, as brought up earlier, has also been
2 something that we put a lot of emphasis on, and we
3 have staff that also use the new technique, such as
4 putting cameras in areas that we don't have staff.
5 One of the things that would be helpful for us in
6 the prison setting is to have more video camera
7 recording. When we don't have staff, then we can
8 monitor different areas of the prison. It's been
9 very helpful to us in our visiting program, cutting
10 down on the amount of misconduct we have had during
11 the visiting. We have been able to take cases
12 forward predicated on having the actual video, the
13 evidence.

14 The problem that we again face in taking this
15 forward especially in the areas where you have more
16 consensual and while it is obviously against the
17 law, as Mr. Dovey pointed out, when you take cases
18 to the District Attorneys and you do have more of a
19 sexual consent, it's been a problem in getting those

20 cases prosecuted. So those are the -- I think those
21 are the challenges. Same thing in areas with staff.
22 If you have staff misconduct, immediately the staff
23 resign and will take it forward and it's been
24 difficult to get the District Attorneys to take the
25 cases forward, for either felony or misdemeanor

1 prosecution.

2 MR. MCFARLAND: Thank you, Warden.

3 MR. KRAMER: Thank you.

4 MR. MCFARLAND: I am very interested in
5 further pursuing the line of questioning, the issue
6 of prosecution and prosecutor's reluctance to pursue
7 investigations and prosecutions. To what do you
8 attribute now that there is a law, now that there is
9 no defense of consent in California prisons -- there
10 is no such thing as consensual sex in one of your
11 facilities. Is that correct?

12 MR. DOVEY: That is correct.

13 MR. MCFARLAND: There is no longer that
14 obstacle. Therefore, there won't be any great deal
15 of discretion on the part of DA as to, "Gee, I
16 wonder if a crime has been committed here." So what
17 is the problem today in getting prosecutors to
18 prosecute crime in prison, specifically sexual
19 assault in prison?

20 MR. DOVEY: I think like all prison
21 crimes. Number one, it is a matter of educating the
22 DA's, and we are aggressively pursuing that. We
23 have a good link with the statewide District
24 Attorney Association, so we are able to bridge that
25 gap, at least at the top end, while the wardens are

1 bridging that gap locally with their local DA's.

2 I do have to tell you, if you are the DA and
3 you have burgeoning caseloads, just like we have
4 burgeoning inmate population, you have to make a
5 decision, are you going to prosecute somebody who is
6 turned loose in the community versus somebody who is
7 already incarcerated. Unless you really believe
8 that this was going to be an issue of public safety,
9 you may want to devote your resources to protect the
10 greater good.

11 Fortunately, I think we are in a position with
12 the District Attorneys Association, that they are
13 pretty open. As long as they believe they have
14 competent cases being presented to them, that the
15 casework was good, that the evidence was clear, I
16 don't think many are reluctant. I think it's more a
17 problem of education and letting them understand how
18 vile this is, how this conduct is about public
19 safety, how this conduct is about protecting our

20 staff as well as our inmates, about reviewing

21 violence, holding people accountable.

22 It is no good to have a rule if no one is

23 going to be held accountable. Pretty soon you have

24 people acting any way they want. And so there has

25 to be to standards. But I think it was once a

1 problem. But I think we are galvanizing our
2 resources, both at the local level with the wardens
3 who work hard with their local DA's, and part of my
4 job is to work more on the statewide consortium.
5 And I believe with the folks that we have in place
6 we are going to see some headway. There are still
7 going to be cases where they are going to have to
8 make their own decisions. Even local law
9 enforcement agencies, when they get criminal cases,
10 they present it to the DA. Not every one of those
11 cases is always going to be prosecuted.

12 I will tell you this, in the meetings that I
13 have been, most of the DA's that I've talked with,
14 they don't want any more crimes that are labeled
15 misdemeanors where they're happening in prison.
16 What good is it to sentence somebody who already is
17 in prison to a misdemeanor? There is no deterrence
18 in that; the guy is doing serious sentence, serving
19 anywhere from over one year to life. And you are

20 going to tell him, if you don't be careful, we are
21 going to sentence you to a misdemeanor crime. Don't
22 bother us with that. If you are going to do
23 something, make it tangible, make it a felony.

24 MR. MCFARLAND: Are DAs elected in
25 California?

1 MR. DOVEY: Yes.

2 MR. MCFARLAND: Felons vote?

3 MR. DOVEY: No.

4 MR. MCFARLAND: Anyone else want to
5 comment on that, the issue of prosecution?

6 Yes, Warden Kramer.

7 MR. KRAMER: Going along with Director
8 Dovey, the ones with the sexual physical violence
9 and the assault and battery that goes along with it.
10 These are the types of cases we have been more
11 successful at.

12 MR. MCFARLAND: Do you still get push back
13 from DAs saying that this sounds like it was
14 consensual?

15 MR. DOVEY: I think there has been. But
16 really as we have been talking and making them aware
17 that there is no thing as consensual sex. That is
18 like saying that your 15-year-old daughter could
19 consent. No, it can't be.

20 Once they understand and put in those
21 contexts, they read 29.6 of the Penal Code, they are
22 lawyers, they understand what the law says.

23 MR. MCFARLAND: I want to ask you,
24 Mr. Dovey, you mentioned a number of very helpful
25 factors that are conducive to deterrence of sexual

1 assault. You named at least eight. Which would you
2 say that are the two or three most important and
3 which are the most challenging to implement and why?

4 MR. DOVEY: I would say to acknowledge
5 training is one of the most critical factors that we
6 can do.

7 MR. MCFARLAND: Training of staff?

8 MR. DOVEY: Training of staff and inmates.
9 It is awareness on everyone's part. And without
10 that people are going to continue to do what they do
11 without any change. So that has been essential.

12 Like the wardens have testified, I think the staff
13 have responded to the training. It is good. It is
14 solid; something they can hang onto. It's
15 meaningful and they understand it. They get it. So
16 training clearly is a benchmark from where we go.

17 Having effective protocols to investigate is
18 clearly investigating, respond to. If the staff are
19 not trained appropriately and we are not going

20 through the right protocols to preserve and collect
21 evidence, to preserve crime scene, to help to reduce
22 revictimization to victims, to handle these issues
23 appropriately, that can be a big issue. You can be
24 trained and screw up a case and not go much further.

25 We have talked about the DA issue, and I said

1 I feel confident about at least where we are
2 positioned now. I see nothing but success. I got
3 to tell you, the population as a barrier, as Warden
4 Malfi said, there are some days with our population
5 in 33 prisons and all the correctional facilities we
6 have, every week we have thousands of inmates'
7 movement around from prison to prison, from
8 reception centers to general population or from one
9 prison to the SHU or wherever they have to go, from
10 this unit to get to a higher level of mental health
11 care.

12 And then we have -- on top of the population
13 we have in California a very complex, and I cannot
14 underscore how complex our system is. We have
15 inmates with high level mental health needs who are
16 sensitive needs versus high level mental health who
17 are general population versus any other number of
18 categories. On any given day, whether it is trying
19 to separate inmates from gang activity, criminal

20 misconduct, it's very difficult with a system this
21 big. We are really looking at what we can do
22 internally, to better manage. Just like we have in
23 the past where we will have a victim come forward
24 who is a victim of a suspected rape. Other times we
25 may have victims come forward who may be the victim

1 of extortion or some other kinds of crimes, and we
2 are good about locking up those victims. And we
3 have some incredible staff working in investigative
4 services units in our prison who really put out a
5 fair amount of work in pursuing all those leads and
6 monitoring inmate telephone calls and mail and do
7 the all investigative protocol. There are not
8 enough staff to go around. So there are some crimes
9 that are happening in prisons that are under
10 reported or under investigated. I guarantee you.
11 So those are barriers.

12 I did want to submit something to the panel
13 that I don't know if you've seen it or not. I have
14 a copy with me. I will give it to you in the break.
15 We have a partnership with U.C. Irvine and
16 especially with the research community, Joan
17 Petersilia. I'm sure you've heard her name. They
18 have done a briefing paper, if you will, an overview
19 of PREA and how does California shape up and what is

20 the status of PREA implementation in terms of
21 research in California. And so I think it might be
22 helpful to your findings and to where you need to
23 go. I thought I would leave that with you.

24 MR. SEXTON: Would you mind summarizing
25 what it says?

1 MR. DOVEY: It talks basically about
2 implementation of PREA and what PREA is. And there
3 is some evidence collection efforts underway, and it
4 talks about what they are doing. We have
5 researchers in our prisons. I think the research
6 has completed and now they are complying the data.
7 We have individual investigators in the prison upon
8 talking with our offenders in confidential
9 interviews. California, and again it is a numbers
10 issue. Are those numbers accurate, under reported,
11 over reported? We want to start talking about
12 comparing us to the federal Bureau of Prisons or
13 Texas or Florida. It becomes a matter are we all
14 reporting the same exact crime? Are we reporting
15 the same data? Our data sets are not accurate.
16 They don't all balance out. At this point in time
17 California unfortunately has the distinction of
18 having a pretty high rate, 4.4 per 100 inmates, and
19 this is as of the year 2000.

20 MR. MCFARLAND: Per year?

21 MR. DOVEY: Per year. Texas was 2.5,

22 federal system 1.7, New York 2.3, Florida 4.0.

23 Florida has a pretty big system, not quite as big as

24 ours, but pretty big. I know Texas, in talking to a

25 former director, Doug Dretsky [phonetic], has done a

1 lot of work on their safe prisons act, their version
2 of what we are rolling out now. They are a little
3 ahead of us. Anyway, just a snapshot of how we are
4 trying to tie in the research community with the
5 local universities. So we are not doing all this
6 ourselves. There are some outside views looking in.

7 MR. MCFARLAND: Who paid for this
8 research?

9 MR. DOVEY: We did.

10 MS. STILL: Actually, the Department, it
11 was matched funds. We paid for half of it and then
12 also the federal government paid for half. Dr. Val
13 Jenness is the lead researcher.

14 MR. MCFARLAND: Did any other panelist
15 have anything to add on the issue of either DA
16 reluctance or any of the factors that are most
17 critical and --

18 MR. SEXTON: Yes, I have a question.

19 I am sitting here looking at the federal

20 numbers submitted in the 2005 report by the Bureau
21 of Justice, Sexual Violence by Correctional
22 Authorities. This is 2005. I notice in California
23 that you have, I'm assuming this is male population,
24 161,709 at the time of reporting. But you are only
25 showing 75 allegations of sexual misconduct. Of

1 those only six are substantiated, 54 are unfounded
2 or unsubstantiated, and 17 under investigation.

3 Is the reluctance, the high number of
4 unfounded or unsubstantiated numbers by the DA?
5 Does this go back to their concern of do we?

6 MR. DOVEY: I am not exactly sure the
7 report you are looking at. I would say no. I would
8 say that is our internal investigations; that is our
9 reporting. That is our numbers, not the DAs.

10 MR. SEXTON: I realize you are going to
11 take your case to the DA. Is the DA -- again, I
12 think your testimony was that they are going to use
13 -- they have to make a decision of their resources.
14 Do we work on a case where the predator is on the
15 outside or inside? But looking at these numbers,
16 and I think you just said 4.-something per hundred
17 inmates. The numbers don't add up.

18 MR. DOVEY: I am not surprised. Again, I
19 think it is a difference of collecting data from

20 different agencies right now. It is dangerous
21 'cause we are not all on the same page. We don't do
22 the performance metrics in our disciplinary systems.
23 We are all a little bit different.

24 MR. SEXTON: You mentioned Texas. They
25 are at 511 allegations and 15 that are

1 substantiated. Propounded. How would you recommend
2 reporting in an accurate, consistent fashion?

3 MR. DOVEY: I think there have been
4 efforts underway throughout the country. The
5 Association of State Correctional Administrators
6 have come out with some recommendations. ASCA is a
7 group on how states can compare apples to apples.
8 We have not always been able to do that. We are now
9 engaged in looking at those performance metrics or
10 those benchmarks on reporting prison crime so that
11 when we talk we are all talking the same language.
12 But sometimes, whether we report it or report it on
13 our disciplinaries, it can be different.

14 For example, an assault. An officer gets a
15 sack lunch thrown on him and it lands on his boot.
16 That may or may not be an assault in some states.
17 In some states that may be an act of overt
18 disrespect. You have to be careful of what you
19 report and how you report. It falls on staff. I

20 don't think that is the biggest problem. The
21 biggest problem is simply reporting and being
22 sensitive and understanding what we are seeing in
23 terms of prison rape. I don't think we have always
24 been attuned to consensual sex, to some of the more
25 or less overt sexual acts and coercive sex. So we

1 are just now beginning to look at all those issues.

2 MS. ELLIS: I would like to thank you for
3 all of this information and couple that certainly
4 with the tour last night. One gets an idea of just
5 how overwhelming this issue is. In the numbers, in
6 the inmates that you have in your facility and even
7 beyond that the numbers of victims left behind in
8 the wake of their activity and behavior that landed
9 them in your institution. So it is an enormous
10 problem, an issue.

11 But I want to go back to Ms. Still and Warden
12 Malfi, to the discussion about the classification
13 which certainly struck a note with me. It sounds
14 like a very complicated process. But hearing you
15 say that all we have at that moment is the
16 information presented to us by the inmate is
17 somewhat confusing to me. Now I realize that there
18 isn't a folder that comes along that provides you
19 with the history of behavior and this sort of thing.

20 Help me, help me understand the

21 classification.

22 MR. MALFI: I apologize, I didn't give you

23 a clear picture. We usually do have what we call a

24 central file. In almost every setting it is a

25 little different. In reception centers where a

1 person is coming into the institution beginning the
2 process, we do have a file in front of us. But in
3 many cases it might not have anything. If you
4 haven't been involved in any reportable incidence or
5 you have been able to fly under the radar, and some
6 of our people are very calculating in their behavior
7 and how to get around systems and behavioral systems
8 and what they, especially predator type people. When
9 you really look at it related to the street crimes,
10 it's boggling to catch people.

11 Just last night on the news here in
12 Sacramento, they have a male who's actually
13 committed 15 rapes and they've been trying to catch
14 this guy for years. This type of behavior, what I
15 mean by that, if the people that you are dealing
16 with are not open to you and you have information in
17 front of you, but you don't have the data that might
18 be a predator or the person might be involved in
19 sexual activity that could attract predators or

20 behavior that is not conducive to this type of
21 setting, it can cause real problems. That is what I
22 mean by that.

23 MS. ELLIS: I understand. I understand.

24 And I do understand that there is accumulation of
25 information that comes forth from probation and

1 certainly other sources as well. Is there an
2 orientation associated with the classification?

3 MR. MALFI: Yes.

4 MS. ELLIS: The orientation for the
5 inmate.

6 MR. MALFI: Yes. In most of our prisons
7 we separate the people when they first come in. We
8 put them into what we call an orientation wing or
9 cell block. Every prison or institution might have
10 a little different, but they are separated. Give
11 them a little time to acclimate to that prison, to
12 see if there is somebody they don't get along with,
13 if there is some people, prior history problems,
14 whatever it might be.

15 MR. MCFARLAND: This is where the fish
16 go.

17 MR. MALFI: Exactly. Quite commonly
18 referred to as fish row, fish bar. Different
19 institutions may have different acronyms.

20 MS. ELLIS: Might that orientation include
21 information regarding, well before PREA, information
22 about sexual misconduct?

23 MS. STILL: It actually does. We have
24 added to the system since the law changed. We have
25 added to the inmate orientation material,

1 information on PREA, the hot line information.

2 In addition to that, we are still getting
3 ready to implement. Most of the institutions have a
4 television system that runs continuously. And we
5 are also going to put videos on which will provide
6 additional educational materials as well as the
7 poster. But providing that information to the
8 inmate population at first coming in is the first
9 critical step. So, one, they are educated, aware
10 of. Two, also they know what their resources are.

11 MS. ELLIS: Very good.

12 MR. MALFI: One thing I would like to go
13 back to. At our institution we have two full-time
14 District Attorneys assigned to our prison. That is
15 how much work we generate. We have a good working
16 relationship. I don't want to paint the picture
17 that the DAs aren't aggressively helping us. A lot
18 boils down to the particular case, and a lot of
19 times these assaults you are usually one-on-one, and

20 it is hard to prove a case like that, especially
21 with credibility of the witnesses. Some of your
22 clientele having a hard time with credibility and
23 imposes a real problem for the District Attorney. I
24 think the District Attorneys are probably more aware
25 now about PREA over the last couple of years. I

1 think they are on board with us.

2 MR. SEXTON: Mr. Malfi, given the
3 information you talked about, inmates being
4 deceptive, definitely character issues, so on, going
5 through the court system, can PREA lead to any
6 manipulation of institutional security regulations?

7 MR. MALFI: Housing, yeah, I think it can.
8 But I don't want to get away from the people who are
9 victims. That is what this is about. That is
10 another thing, another awareness that administrators
11 --

12 MR. SEXTON: We are looking for best
13 practices, worst practices, but also concerns that
14 practitioners would have. I think I heard there may
15 be some concerns regarding PREA, such as dressing
16 out, not dressing out an individual before taking
17 him to the hospital, which I am assuming would be
18 outside normal protocol.

19 MR. MALFI: But I think in California, at

20 least at my prison, we probably still do.

21 MR. SEXTON: You change the clothing?

22 MR. MALFI: If we have to, we'll put it in

23 an evidence bag. It is a big concern. You know,

24 the security and safety of the public is probably

25 one of our most concerns. Every warden that goes to

1 bed at night thinks about that problem. We
2 transport at my prison probably close to 250 to 300
3 inmates a month outside for medical, court cases. I
4 will tell you that is at the top of my priority of
5 things that keep me awake.

6 MS. ELLIS: I appreciate that, but at the
7 same time I have a strong sense of safety and
8 security concerns for your staff as well, and I
9 think that that has an important bearing on the
10 workday, on behavior, on one's ability to perform
11 their job, knowing that there are concerns and that
12 there are initiatives and protocols in place to help
13 those people who work in that environment.

14 And I am wondering what do you have, what kind
15 of support, what kind of initiatives are available
16 for your staff, for the folks who actually are on
17 the front lines working every day in your
18 institutions? What do you do psychologically in
19 terms of the kind of support that they need?

20 MS. STILL: One of the supports that I
21 think that we provide is I think having a written
22 program, providing training, having a checklist so
23 staff know what to do when faced with an incident.
24 That goes towards supporting the staff. We also,
25 though, have outside programs, employee assistance

1 type programs, that are available to staff in the
2 event that they are experiencing a trauma. We also
3 have -- in the event that something happens, we have
4 a posttrauma team that is available to assist the
5 staff. Those are a few.

6 MS. ELLIS: I think you mentioned, sir,
7 the importance of training, ongoing training, and I
8 totally agree. And I must apologize, I have not
9 seen the NIC tapes, so I don't really know what the
10 training consists of. I am interested in knowing to
11 what degree does the training include the impact of
12 sexual assault on a victim.

13 MR. SEXTON: I believe Mr. Thigpen will be
14 testifying on a panel. He is the head of NIC.

15 MR. ELLIS: And I realize that. This
16 question is --

17 MS. STILL: I will answer it from a few
18 different perspectives.

19 MS. ELLIS: Thank you.

20 MS. STILL: One is the video actually has
21 population talking about the impact. It has
22 administrators talking about the impact. So too,
23 the victim itself, him or herself, and that is one
24 thing that is very effective that NIC did. Is that
25 they were very gender responsive in the preparation.

1 They have one video for the male population and then
2 they have one for females. I think that went a long
3 way. I think also the --

4 We partnered with Stop Prisoner Rape, and one
5 of the contracts that we have, separate and apart
6 from them, is they have helped us inform our program
7 to make sure that we are supportive. But also to
8 have rape crisis counseling services available to an
9 inmate that is subject to an assault. I think that
10 is very important. And that is something, had we
11 not reached outside of ourselves, that we would have
12 thought about doing, to be quite honest. So I think
13 that is something very important that they brought
14 to the table.

15 MR. DOVEY: The lesson plan really speaks
16 to trying to give our staff a sense of what are some
17 of the behaviors that you might be witnessing that
18 could give you a clue that there might be something
19 wrong here or maybe we need to look a little deeper.

20 As you look between lesson plan, videos, you walk
21 away, I believe, with a sense of maybe a better
22 understanding and a sensitivity, is maybe the word I
23 am trying to come away with, that gives staff, "Gee,
24 maybe what I've been witnessing isn't what I
25 thought, maybe it is something else."

1 So it kind of opens the doors a little bit for
2 all of us in terms of what we need to be aware of.
3 It is really correctional officer awareness, is a
4 lot more than it ever used to be. We ask so much of
5 our staff. It used to be if you knew three or four
6 case factors about offenders you pretty much knew
7 all you needed to know. Now if you look at our
8 classification committee actions, there is 50, 60
9 different required case factors that have to be
10 spoken to, and it is just onerous. But still, we
11 still plug away. We still provide the training. It
12 gives you a sense of there might be more victims out
13 there than we knew.

14 MR. MCFARLAND: Director Dovey, in your
15 testimony you state that management must also hold
16 staff and inmates accountable for any violation of
17 policy. What can impede a Department of Corrections
18 from holding staff accountable for violation, for
19 sexual misconduct, staff-on-inmate sexual assault?

20 MR. DOVEY: Staff-on-inmate? Failure to
21 report.

22 MR. MCFARLAND: How do you overcome those
23 failures to report? Obviously, isn't there going to
24 be a code of silence among line officers that they
25 are not going to be snitching on their fellow

1 officer if he's got inmate X in the closet for ten
2 minutes?

3 MR. DOVEY: You've come to the right state
4 to ask that question. We have worked on code of
5 silence for several years now. And has there been a
6 code of silence? On many levels, absolutely. The
7 staff -- I have had staff write me reports directly
8 and say, "Here is my incident report. Just in case
9 you don't pick it up in my incident report, here is
10 a separate report. And what this person did is
11 wrong. And so I have seen a lot more staff come
12 forward because it is part of the paycheck
13 protection plan. If you failed to report, that is
14 almost as grave as the offense, as had you done the
15 act yourself. And so covering up those kinds of
16 acts really anymore will get you in a lot of trouble
17 very quickly. We've completely redone our employee
18 disciplinary matrix, and dishonesty, failure to
19 report is weighted very high.

20 So there is a concerted effort to really focus
21 on those kinds of act in our staff. And while I say
22 that and there will continue to be employees who
23 want to test that, my testimony to you is the
24 majority of the staff that work for us want to come
25 in, do a good job and go home. They want to do a

1 good job. They want to be recognized once in a
2 while, and they want to go home when it is time to
3 go home.

4 MR. MCFARLAND: What does the peace
5 officers union have to say about staff
6 accountability for sexual misconduct?

7 MR. DOVEY: Initially my understanding
8 from the table was that they were concerned that
9 staff would be inappropriately accused. And I heard
10 that as a warden. I can tell you I dealt with that
11 on a personnel level, that the staff was afraid that
12 they would be accused when there was no charges
13 there, there was no behavior there.

14 While I understand that and that is another
15 reason why cameras would be nice, roll the tape. If
16 it didn't happen, roll the tape. Unfortunately, we
17 have experienced more often than not the charges or
18 allegations weren't true. That is what I have
19 experienced. I used to tell all my staff coming

20 into the prison after the Penal Code changed, all
21 the new staff, whether they were brand-new academy
22 or lateral transfers, you need to know something
23 straight up. If you have sex with one of these
24 inmates, I will spend my last breath referring your
25 case for prosecution. You need to know. That is

1 what time it is. As long as you don't have that
2 problem, you will have a great career. Somebody had
3 to tell them that point blank, plainly and in simple
4 terms. It is not going to be tolerated.

5 So I think once staff realize that you are
6 serious, our staff want to do the right thing.

7 MR. MCFARLAND: How do you create -- I am
8 speaking again trying to find best practices that
9 could be emulated by other prison systems. How do
10 you create a culture along line staff that gets it,
11 that sexual assault is not to be winked at? Where
12 does it start? How do you create that kind of
13 culture among your staff?

14 MR. DOVEY: I think you came to the right
15 state. That is something we work on every day.
16 These wardens and their staff and their
17 administrators and their captains, and you probably
18 had a good opportunity to see that last night, they
19 work very hard under some demanding times. You have

20 to set the tone, and it starts with us. And like
21 Wendy said, executives were the first ones to be
22 trained. So we have to be in tune with this and
23 understand what time it is, and we have to walk the
24 walk. So it starts with us and we will roll it
25 down. When there are opportunities to take action,

1 we take action.

2 MR. MCFARLAND: And then the word gets
3 around?

4 MR. DOVEY: The word gets around. We have
5 done a lot of work, as I said, on employee
6 discipline, and I know Secretary Hickman is here you
7 will have some questions for him about that. He was
8 timely and instrumental in leading that change in
9 our Department, and I think his testimony will be
10 beneficial to the panel. We have worked very hard
11 on employee discipline, making staff aware, making
12 staff accountable. Again, it gets back to training,
13 making sure everybody understands what their
14 responsibility is and you know we can get very
15 serious about it and we do.

16 I like to refer to it as a paycheck protection
17 plan. That is Chapter 3. If you want to keep your
18 paycheck, then you are going to have to toe the
19 line.

20 MS. ELLIS: I would like to comment to
21 that, that same question. Last night the lieutenant
22 and the warden kept reminding me that communication
23 is the key. You mentioned, Ms. Still, peer
24 relations or peer support. Talk a little bit about
25 how that works among inmates. To what degree do you

1 bring that process into the overall ability to
2 communicate and to get the word down and to educate.
3 How does that work?

4 MS. STILL: Our peer education program
5 will be the last component that we implement as part
6 of our PREA, and it is only last because we wanted
7 to get the result of the research to then help us
8 inform what the peer module needs to consist of. We
9 do have peer education and peer education programs
10 in various levels and effectiveness at institutions
11 throughout the state. This next step is to roll
12 statewide and make peer education a very formalized
13 program out with a component specifically on PREA.
14 And once we have the final results of the research,
15 we will be incorporating that information into the
16 module as well as parts of the law support, the
17 counseling, the services that are available. And
18 that was the final piece of the funding that we
19 received in the grant.

20 MR. SEXTON: I have two questions,

21 Mr. Chairman.

22 Mr. Dovey, is there a state statute or policy

23 within DOC for a minimum staff-inmate ratio?

24 MR. DOVEY: Is there a policy? Generally,

25 it is six to one. Is it written in our regs

1 someplace? No.

2 MR. SEXTON: I had a question for you, Ms.

3 Still. You talked about your transgender project.

4 How much of a problem are you having in this area in

5 regard to sexual misconduct or prison rape with the

6 transgender population?

7 MS. STILL: What we found, and again it

8 was as a result of the testimony that went on in San

9 Francisco at the federal PREA hearing. I guess that

10 is where I became very sensitive to what a potential

11 problem it was. That is where we asked U.C. Irvine

12 to add that component to the research. Again, we

13 haven't had the result back. But do I think it is

14 an issue? Absolutely. It's self-reported. Do we

15 have a number, a significantly higher number of

16 incidents reported? No. I think that there is more

17 of a hesitancy to report from that population, which

18 is what we are trying to change.

19 MR. SEXTON: How do you make the decision

20 where they go in classification?

21 MR. DOVEY: That is what drove the
22 research. A lot of transgender population was
23 housed at one or two locations where they get
24 selective healthcare services. So as time goes on
25 and those burgeoning population pressures keep

1 pushing, it also pushes the healthcare system which,
2 as you know, is in receivership.

3 So when healthcare professionals were talking
4 about moving some of that population to a prison
5 where that population has not been housed in large
6 numbers, it becomes, well, what do we need to do
7 first before we do that, and are we sure we are not
8 going to put them in some kind of risk.

9 MR. SEXTON: Let the warden sleep better.

10 MR. DOVEY: This prompted a whole another
11 level of our research.

12 MR. SEXTON: Ms. Hardy, I just want to
13 compliment you. I have been up here looking at your
14 lesson plan and your overall program. I want to
15 compliment you on your overall program. It appears
16 to be an outstanding program.

17 MS. HARDY: Thank you. It was a group
18 effort. We had a lot of support from internal and
19 external stakeholders putting it together.

20 MS. ELLIS: I assume the victim input has

21 come from victims?

22 MS. STILL: It has. And also we have had

23 our victim services. Within our own organization we

24 have a victim services unit. They also sit on our

25 committee. They help us form our program and

1 policies.

2 MS. ELLIS: Very good.

3 MR. MCFARLAND: Is it fair to say that
4 cameras are a lot cheaper than correctional officers
5 and, if you had the money, you would address the
6 problem of visibility by putting cameras in ad seg
7 in the jails where you have had 136 inmates and
8 three officers, triply bunked?

9 MR. DOVEY: If I had the checkbook,
10 cameras would be everywhere.

11 MR. SEXTON: Would you change any design
12 facility? For future facilities would you make any
13 architectural changes to try to facilitate PREA?

14 MR. DOVEY: The Department adapts to the
15 worse possible conditions. We built cells in some
16 of our prisons that could not be doubled celled, and
17 I can tell you that we double celled them. So,
18 yeah, you could probably make changes here or there
19 to better facilitate viewpoints. The 270 design is

20 a really good design. Unless you are going to have
21 one officer supervising each inmate, one-on-one, you
22 are always going to have times, places, areas of the
23 day where you just absolutely cannot keep an eye on
24 everybody. So a mix of good physical plant design,
25 taking advantage of the best that correctional

1 architecture can offer and technology and how to
2 train staff, I think we'll get there.

3 Part of our PREA grant will include a test run
4 at cameras in three facilities: a juvenile justice
5 facility, an adult male facility and an adult female
6 facility. We are going to test that. Measure the
7 evidence. I would go forward without that, but it's
8 away we can get some cameras in pretty quick, and we
9 can pay for it. We are planning on that on a larger
10 scale in the years ahead.

11 MS. ELLIS: May I ask one question that is
12 not on the script?

13 MR. MCFARLAND: None of this is on a
14 script.

15 MR. ELLIS: Really not on the script. I
16 am just wondering to, barring the headlines today
17 that someone shared with me, to what extent do you
18 think the public is aware in California, and I
19 realize you cannot speak for every one of PREA's

20 implications, to what degree do you think the public
21 is interested in PREA and to what degree and what
22 kind of support do you generally get in terms of the
23 public regarding the work that you do or what goes
24 on inside your facilities?

25 MR. DOVEY: And --

1 MR. MCFARLAND: Can you move your
2 microphone closer to you.

3 MR. DOVEY: With 173,000 offenders, and
4 that is not counting the 111,000 I believe the
5 number is, and large numbers in juvenile justice,
6 probation, it is not all about CDCR. A lot of the
7 population in California are on probation, in
8 custody, incarcerated someplace. It used to be kind
9 of rare that our own employees would have an
10 offender family member in custody. Anymore pretty
11 common.

12 So I think there is gross awareness in
13 California about what happens in prisons, although I
14 have to tell you I still meet people who believe
15 that what happens in prison is what they see on HBO.
16 I think Californians are very concerned about what
17 happens in prison. They want to be safe. They want
18 to know they are protected. Beyond that, I am not
19 sure how much more some of them want to know. I

20 mean, their tax dollars are supporting this. We
21 have responsibility to them to be efficient and make
22 sure we don't have escapes, to make sure that in
23 some kind of way that prisons are operated safely
24 and that they are transparent, because I believe we
25 owe them. But beyond us keeping them there and not

1 having escapes, I am not quite sure how much the
2 general public knows, cares. They have demand in
3 their own lives, working, supporting their families,
4 trying to take care of their responsibilities. I am
5 not so sure it is as high on everybody's list as
6 mine.

7 MR. MCFARLAND: Is a prison -- you have
8 licensed medical or mental health counselors in your
9 facility, right?

10 MR. DOVEY: We have psychologists,
11 psychiatrists, social workers.

12 MR. MCFARLAND: California has recognized
13 a legal privilege of confidentiality in discussions
14 between those counselors and inmates; is that
15 correct?

16 MR. DOVEY: That's correct.

17 MR. MCFARLAND: Is there any conflict
18 between what you expect of a counselor if an inmate
19 says I was sexually assaulted, but I am afraid of

20 the word getting around? Is that -- must that
21 counselor immediately disclose that crime? And if
22 so, doesn't he or she ignore the confidential
23 relationship under which it was disclosed?

24 MR. DOVEY: That is a subject that we have
25 had recent discussions. We continue to have that

1 debate. Most of the time we are fortunate that
2 counselors are able to find a way to let us know
3 about those crimes committed. There are some that,
4 unless there is a threat, an immediate threat, might
5 not report it. But most of the time the clinicians
6 we have are very good about letting the custody
7 staff and investigators know what is going on.

8 MR. MCFARLAND: Is there protocol where
9 they would be disobeying if they chose not to
10 disclose?

11 MR. DOVEY: Unless there was a threat to
12 somebody else. We have various case law on the
13 books that they follow. But I don't know of any
14 case where we had a clinician disciplined because
15 they failed to disclose that.

16 MR. MCFARLAND: Would you expect them to
17 be disciplined?

18 MR. DOVEY: I would expect them to
19 disclose.

20 MR. MCFARLAND: It would affect their
21 employment status if they declined, if you learned
22 they had declined to disclose that. In other words,
23 it came out three months later. Then you asked,
24 "When did you first tell anybody inmate X that you
25 were assaulted?" "Well, I told mental counselor Y

1 the day after, that night."

2 MR. DOVEY: I am not saying that hasn't
3 happened, but I know of no case where that has.

4 MR. MCFARLAND: What would the system do
5 to the counselor if he or she decided not to
6 disclose?

7 MR. DOVEY: I think I would want to know
8 what their training was. So often we want to jump
9 to a conclusion about what happened. I would want
10 to know a little more. We have case law that
11 requires some reporting if there is a belief that
12 someone is going to be harmed. That is pretty
13 common. Most of the staff, I don't see that as a
14 barrier. If that is the question, I don't see that
15 that is a barrier.

16 MR. SEXTON: Given the recent concerns of
17 law enforcement, going back to your question, with
18 the increases of crime in large and medium size
19 cities nationwide, what kind of increase in numbers

20 do you see here in California in your prison

21 population over the next few years?

22 MR. DOVEY: It is a good question. I

23 think that is one of the reasons we elicit the help

24 of research to help us better report. I don't know

25 that we know the extent that is occurring now. I

1 don't know that we know the extent of prison rape
2 occurring now. Once the training is completed and
3 once we standardize our reporting protocols, I don't
4 know that I have an accurate baseline to tell you.

5 MR. SEXTON: Do you have any idea what,
6 projecting in the next two to five years, your
7 prison population, how far you are expecting it to
8 grow?

9 MR. DOVEY: It's -- unless other things
10 that occur, I think it's expected to continue to
11 rise.

12 MR. MCFARLAND: May I request that you
13 provide the panel with some of the documents that
14 have been mentioned, specifically the PREA
15 implementation curriculum, which I believe
16 Mr. Sexton has been thumbing through there. If we
17 can each get a copy that would be great.

18 MR. SEXTON: Thirty years of being a cop,
19 you go get it. Thank you for providing it to us.

20 MR. MCFARLAND: And the checklist,
21 including the PowerPoint.

22 MS. HARDY: That's in there.

23 MR. MCFARLAND: And the written report
24 that Professor Jenness will be producing by next
25 spring, is that a public document? Will that be a

1 public document?

2 DR. JENNESS: I never said this in my
3 entire research report, probably be delivered ahead
4 of schedule.

5 MR. MCFARLAND: And that is on the
6 record.

7 DR. JENNESS: Like I said, could possibly
8 be.

9 MR. MCFARLAND: Let me ask one last
10 question to anyone. What are the Department's plans
11 for research and evaluation of your success? How
12 would you define success? Who is going to be doing
13 the research and evaluation? How did you select
14 those persons? Are they internal or external? Talk
15 to us a little bit about how you are going to
16 measure your effectiveness, given the fact Mr. Dovey
17 guaranteed us there are under reporting going on.
18 So there can't be any kind of a baseline. We don't
19 know. We don't have a baseline. We have no idea if

20 we are improving.

21 MR. DOVEY: We do have numbers now. We

22 are eliciting the help of outside researchers like

23 Val Jenness, other research community to help us

24 establish. Success will be full implementation of

25 this program. We need to be vigilant about what we

1 are looking at and identifying the conduct.

2 I think I am going to have to ask our research
3 community to redefine that success. We can roll out
4 the training. We can work with the DAs. We can do
5 great investigative work, present good cases. How
6 do you know what you don't know?

7 MR. MCFARLAND: How do you prove a
8 negative is kind of difficult.

9 MS. STILL: An increasing number can be
10 positive. If you have an increase number, then, of
11 course, the population feels safer, could be, feels
12 safer in coming forward, not that is necessarily
13 happening at a more frequent rate.

14 The other thing that we will continue to do is
15 work with the Moss Group relative. We have some
16 open technical assistance request in terms of those
17 performance measurement, doing some additional work.
18 Like I said, NIC and the Moss Group has been
19 fantastic with us. They will certainly be

20 partners.

21 MS. ELLIS: I heard several of you use the
22 term "continuity". I think you can look at
23 continuity of response, quality of continuity of
24 response as well.

25 MR. MCFARLAND: Is the federal judge going

1 to be running the system in six months? You take
2 the Fifth on that?

3 MS. STILL: I am not an attorney, but that
4 is what I advise.

5 MR. SEXTON: What I thought was
6 interesting last night, I was watching the tail end
7 of a ball game or ESPN or something, and you had a
8 correctional association commercial come on that was
9 kind of pointed about the safety issue for
10 correctional officers. They are marketing.

11 MR. DOVEY: Right.

12 MS. STILL: The front page of today's
13 newspaper really says that. I think inmate
14 population, the prison law office is now weighing
15 in. Filing lawsuits. So stay tuned.

16 MR. MCFARLAND: Again, thank you to each
17 one of you for your groundbreaking work in this area
18 and for your candid testimony and also for your
19 hospitality and, of course, the panel.

20 We will be in adjournment for 15 minutes and
21 start promptly at 11:00, 11 minutes, I guess.

22 MS. ELLIS: Thank you. Thank you so much.

23 (Panel 1 concluded at 10:49 a.m.)

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PANEL 2

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MR. MCFARLAND: It is s privilege to have

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the Director of the National Institute of

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Corrections, Morris Thigpen, here. And as has been

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mentioned a number of times by members of the first

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panel of witnesses, NIC is frequently the

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clearinghouse of best practices and on the cutting

9

edge of correctional innovation. And I say that as

10

a fellow Justice Department employee.

11

So without further adieu, Mr. Thigpen, thank

12

you very much for joining us and sharing with us.

13

MR. THIGPEN: It is good to be here.

14

Again, I thank you for the opportunity. I was

15

privileged when I saw the members of the panel to

16

say that Sheriff Sexton was on this. I had the

17

opportunity to work with him for a number of years

18

the time I served as Commissioner of Corrections in

19

Alabama.

20 MR. MCFARLAND: I am remiss. Mr. Mazza
21 has reminded me that I need to swear you in, not
22 that I have any question about your veracity.

23 (Oath administered by Mr. McFarland.)

24 MR. THIGPEN: Now I have to change my
25 testimony about Sheriff Sexton.

1 MR. SEXTON: I was wondering about that.

2 MR. MCFARLAND: That is why the sheriff
3 asked me to swear you in.

4 MR. THIGPEN: He was a leader in the state
5 and president of the National Sheriffs Association
6 and continues to be one of the leading proponents in
7 the National Association of Sheriffs.

8 MR. MCFARLAND: Can you all hear?

9 Slide that up.

10 MR. THIGPEN: Is that better?

11 MR. MCFARLAND: Warden Malfi, can you
12 hear?

13 MR. MALFI: Yes.

14 MR. THIGPEN: In Section 5 of the Prison
15 Rape Elimination Act, the NIC has a number of
16 responsibilities to provide training and education,
17 a clearhousing, to make a report to Congress on what
18 is being done. I think we have some knowledge and
19 experience that we can share with this group. I

20 think that is due to the fact that we have had over
21 30 years of providing assistance to correctional
22 agencies through NIC.

23 We have certainly a specified role under the
24 PREA law, and I think also we knew from the very
25 beginning we had an opportunity to build, as far as

1 our work with the PREA legislation, on the basis of
2 work that we've been doing for almost a ten-year
3 period on staff's sexual misconduct.

4 You would frequently hear me use the term
5 "we," and I do that very purposefully. Because I
6 think the knowledge and information that I have
7 tried to share with you is not just mine alone, it
8 comes from the work we have done with many of the
9 individuals that we have had the opportunity to work
10 with over the years.

11 In 1996, we began an initiative to assist the
12 field in addressing the issue of staff sexual
13 misconduct. Our early work, which really was
14 stimulated by the awareness of litigation in women's
15 prisons, that raised the visibility of staff sexual
16 misconduct. I think at that time a lot of this
17 misconduct was really approached from the standpoint
18 of you just got a few bad apples out there, and if
19 we deal with a few of the bad apples we can solve

20 the problem. I think what was significant that we
21 have learned about our focus and approach in NIC was
22 acknowledgement that an effective correctional
23 management response requires more than just a few
24 bad apples approach.

25 In fact, to understand staff sexual misconduct

1 as an agency, we must look at coordinated
2 strategies, create strategies, and sometimes we
3 refer to that as a management tool kit. This
4 systemic approach has served us and the field well
5 as a conceptual framework to address the critical
6 concerns highlighted in the Prison Rape Elimination
7 Act. We would suggest that if these components are
8 not addressed, the environment is not conducive to
9 deterrence.

10 Generally, our systemic approach recommends
11 that agency leadership ensure that the following
12 areas are addressed, and a number of these have
13 already been mentioned in previous testimony from
14 California.

15 Certainly leadership and direction that it
16 provides. The law that exists needs to be put on
17 the books. Policies, training, investigations,
18 management and operations. Media response. Inmate
19 offender programming. Culture. Victim assistance

20 and after action response. All of those, any number
21 of these have been mentioned in some of the previous
22 testimony.

23 We have produced a video, and we have used
24 videos as a means of trying to reach a large
25 audience. Because when you look at the field of

1 corrections and the numbers that are out there and
2 that need to be informed about PREA and to have
3 assistance in trying to deal with the problem that
4 exists, it is almost overwhelming. We have found
5 that throughout our videos this has been one
6 mechanism that has worked well for us.

7 In the packet of materials that I placed at
8 each of your desks, there is a copy of the video
9 along with the resource guide that went out to the
10 agencies to try to help inform them of the PREA act.

11 We also have used extensively cooperative
12 agreements. We have a number of these. One of our
13 main ones is with the Moss Group, and the other one
14 has been with the American University, the
15 Washington College of Law. Both of these agencies
16 have assisted in developing action plans and
17 strategies that support this systemic approach.

18 Training and technical assistance has touched
19 just about every study and permeated through all

20 levels of corrections. We have served prisons,
21 jails and community corrections. More recently we
22 are beginning our work in the juvenile justice
23 field. I don't think that has been mentioned at
24 this point today in any of the testimony. But
25 juveniles do fall under the purview of the PREA

1 legislation. We right now have completed a video
2 entitled "Keeping Our Kids Safe," a tool for
3 juvenile professionals. It will soon be going out
4 for administrators across the country. This summer
5 American University will begin a training program
6 designed for juvenile justice. We have begun
7 on-site technical assistance with the field.

8 In the last 11 years that we've been working
9 with staff sexual misconduct and with the PREA
10 legislation, we have completed almost 200 on-site
11 technical assistance events focusing in these two
12 areas.

13 There are a number of people in the audience
14 today that have participated with us in that effort.
15 Couple of them, I believe, are scheduled to testify
16 later before you. Robert Dumond and Barbara Owen.
17 Tina Farmer is in the audience, Andie Moss and Dee
18 Halley. Also I would be remiss if I didn't mention
19 the assistance we've gotten from Stop Prison Rape.

20 They have also been very helpful with our efforts.

21 This week, for instance, we are working in
22 Wisconsin, assisting them with working with union
23 presidents, one of the areas that you have asked
24 specifically about. It is with this background of
25 knowledge and experience that we respond to some of

1 the questions that you raised. The first of these:
2 What factors and environment are or are not
3 conducive to deterrence of sexual assault in prison?

4 I would mention one of the main factors is
5 leadership in culture. When you go into any prison
6 setting or any kind of setting in which people are
7 maintained in corrections, if there is allowed in
8 there a sexualized environment among the staff, then
9 it is not surprising that some staff and offenders
10 may feel more permission to participate in sexual
11 conversations and more. As one walks around in
12 facilities, listens to conversations, looks at
13 things on the wall, talks with people, you're going
14 to get a feel, I think, of just what the environment
15 is like there. And it is very important to
16 determine what that is like.

17 If leadership does not hold all staff
18 accountable for reporting misconduct, then a code of
19 silence is going to prevail. The culture of a

20 facility, and in the fact of culture we are talking
21 about the norms, behavior and attitude of staff and
22 offenders, is impacted by the leadership and
23 day-to-day management and operations.

24 I would suggest to you, as you begin to look
25 at those entities that have been brought before you

1 that seem to be doing the best job in deterring
2 prison rape and sexual misconduct, you are going to
3 find that leadership may be played one of the most,
4 if not the most, important role in that success.

5 Culture is impacted by location. One of the
6 things that we have picked up in some of our work,
7 you sometimes see some real contrast where maybe you
8 have an urban population that is in a prison setting
9 that is in a rural area and where most of the staff
10 come from that same area. There are conflicts in
11 some of the cultures that exist. So that is another
12 area that I think has to be looked at and
13 understood.

14 Another thing about the culture, if a facility
15 is run on the basis of fear rather than hope-based,
16 we believe the environment is not conducive to
17 deterrence. I think, again, as you move about in
18 any facility, if you have been in the business of --
19 maybe if you haven't been in the business -- I think

20 you can begin to make that determination of fear,
21 whether this is a facility that is run on the basis
22 of fear or whether it is on the basis of
23 programming, the hope, potential that is given to
24 staff, to inmates that there is something better.
25 There is the opportunity to improve. There is a

1 chance to become a law abiding person. And so I
2 hope that would be one of the things you would be
3 looking at.

4 Another factor around management and
5 operations. Poor management and operational
6 practice can lead to sexual violence in
7 institutional settings. There are any number of
8 factors there. I think where you see excessive use
9 of overtime you may find that, as a result of that,
10 some of the staff become overfamiliar with certain
11 inmates, and that is where some of those
12 relationships may begin to build.

13 Compromised grievance processes can become a
14 real factor. Investigations that lack credibility
15 and integrity. Poor classification. Overcrowding.
16 Certainly I think that was emphasized in the
17 previous panel. They talked about what California
18 faces. And then poor or no training of staff and
19 offenders.

20 Another factor that again was referred to in
21 the previous panel was around law and prosecution.
22 State laws have a tremendous impact on these issues.
23 All states have some laws, but they vary widely in
24 penalties. One of the things that NIC, that we are
25 proud of, is, I think, certainly when we looked back

1 at the point when we began our staff sexual
2 misconduct work and the continued work we've done in
3 PREA, I believe that we have had some impact on
4 helping so many of the states to change their laws
5 and to increase the penalties, moving from
6 misdemeanor to penalties. That is something that we
7 are very, very proud of. Some of the states had no
8 laws at all in this area.

9 We also in some of the cases that we have done
10 in American University, we have had individuals from
11 states can come in and when asked about certain laws
12 that existed, they were not aware of what the laws
13 in their own state were. So there is education
14 practices there that is needed in the training.

15 Some states have laws in sexual misconduct
16 that prosecute both staff and offenders. This
17 sometimes led to problems in getting offenders to
18 come forward and for agencies to proceed with the
19 prosecution. Certainly there was discussion

20 previously about the lack of prosecution and the

21 priority that is sometimes given to them

22 Your second question: Which system protocols

23 and policies require examination?

24 We would suggest a number of policies and

25 protocols are to be considered in policy review of

1 the area. In reviewing these, administrators should
2 look well beyond the obvious ethics and
3 fraternization policies. In the packet you will
4 find a policy guide attached that gives outlines and
5 important considerations that we feel agencies
6 should address in developing strong PREA policies.
7 I think you have this. It is actually a very, I
8 think, good tool. It goes through a number of areas
9 asking a series of questions, and they are asking
10 you to respond to those about your agency or your
11 state, and that can be a way of really identifying
12 whether there are shortcomings in terms of the
13 policies that exist.

14 The Moss Group and NIC provide technical
15 assistance to the states to help address and to help
16 look at the whole question about policy. And we
17 have done that in any number of areas. But just
18 writing good policy is not the end. The agency
19 leadership must assure they are translating,

20 including in staff POST orders, training plans and
21 on-the-job training units.

22 Your third question: What staff positions in
23 such a system would be key witnesses?

24 I think that would include a broad range of
25 staff. Typical interviews in the work that we do

1 are held with administrators and his or her
2 executive team. Others generally include the
3 investigator or chief of internal affairs, shift
4 commanders, medical staff, supervisory staff, some
5 line staff and inmates. Union leadership is also
6 very important. Others are identified based on the
7 presenting issues of the work. We don't need to
8 forget areas like food service, recreation, plant
9 maintenance or inmate work supervisors. From a
10 larger systemic perspective, prosecutors, deputy
11 commissioners, commissioners, human resource
12 personnel, legal counsel and others should all be
13 considered.

14 For the panel, review of recent cases from a
15 facility may be useful in determining key staff to
16 be interviewed. They can sometimes provide, I
17 think, important clues as to what is going on.

18 Fourth question: How to examine the training
19 of correctional officers and medical staff on prison

20 rape?

21 We would urge the Review Panel to broaden your

22 question. Training is critical for all staff,

23 volunteers and contractors. The training should

24 include topics such as thorough review of local

25 policies, state and federal laws, the dynamics of

1 staff and offenders in facility settings, reporting
2 mechanisms, maintaining professional boundaries, red
3 flags or warning signs, the whole investigator
4 process.

5 Specifically, correctional officers should
6 have training on how to maintain those professional
7 boundaries. Case examples of misconduct and abuse.
8 Sometimes role playing in a training situation can
9 be a very powerful training pool. How do you report
10 misconduct? How to maintain integrity of
11 investigation as a first responder, how to respond
12 to staff or offenders if they are first responders
13 or sense a problem developing? In other words, some
14 very important skilled-based training.

15 Medical staff should also be trained.
16 Medical investigation protocol, confidential
17 protocol, the role of medical and coordination with
18 other staff regarding reporting. In addition to
19 reviewing the training content, we suggest verifying

20 training schedules, determining that the training is
21 offered to new hires as well as current staff,
22 volunteers and contractors, and identifying the
23 frequency of this training. It is very easy
24 sometimes to go and ask about training and be given
25 a very impressive outline of what is done in

1 training, but you need to verify that that is being
2 used and actually implemented.

3 Five: What are the likely barriers to
4 reporting, accurately investigating and deterring
5 prison rape?

6 In your packet of information we have provided
7 you with a research bulletin that is called "Staff
8 Perspectives." In this we collected from 12 site
9 visits around the country and involved over 300
10 staff on all levels in our work. I think you will
11 find some very usable and informative ideas here
12 that in the job that you are assigned to do could be
13 very helpful.

14 They describe some of the barriers. A low
15 confidence in the investigative process, a lack of
16 cooperation with investigation, a fear of
17 retaliation, shame and guilt, false reports,
18 difficulty in determining consensual sex among
19 inmates, the code of silence. We would add to that

20 list attitudes of leadership, poor response from
21 some prosecutors and other red flags we previously
22 mentioned in responding to question one.

23 Finally: How do you assess the role of the
24 correctional officers' union in deterrence of prison
25 rape?

1 Union leadership should always be considered a
2 part of the solution. Union buy-in is critical to
3 effective practice in addressing prison rape. Areas
4 to consider: Involvement in the policy development
5 process. It is not good practice to sit down,
6 develop all the policies and then, without input
7 from the union, expect them to just come in. That's
8 great. They need to be involved in the development
9 process.

10 Meetings with union leaders and agency
11 administrators to discuss the safety issues involved
12 for union members if prison rape is not addressed.
13 We must realize one of the main purposes of that
14 union is to maintain the safety, both of their staff
15 and the inmate population. Unions want safe prisons
16 for both staff and inmates.

17 I want to assure your group that from NIC's
18 standpoint that whatever we can do to assist you
19 with any information, materials that we have, they

20 certainly are available to you.

21 And finally, closing, I did something before
22 leaving the office on Monday. I went and looked at
23 the Bureau of Prisons files that we get each day on
24 Newsclip. And I went back and looked for the month
25 of just November, and there were four cases that

1 were highlighted in those newsclips.

2 One out of Oregon where an officer took
3 advantage of a mentally, handicapped female inmate
4 and bribed her for sex with a can of Copenhagen.
5 Say those things don't happen. They do happen.

6 Up in New York an officer there in a jail who
7 had abused a number of inmates. Interesting, one
8 out of, I believe this one was in Washington state,
9 where a contractor who was an X-ray technician
10 engaged in, and he had just been convicted of,
11 sexual misconduct with a male inmate.

12 And then the other major one that is going on
13 right now is a trial that is underway in
14 Tallahassee, Florida, as a result of the federal
15 facility there, in which an officer from the OIG's
16 office was killed and a number of officers that are
17 under indictment.

18 MR. MCFARLAND: That is Office of
19 Inspector General.

20 MR. THIGPEN: Right, excuse me.

21 So there are things going on out there that
22 are for real, and we need to address.

23 MR. MCFARLAND: Thank you very much,

24 Mr. Director. Questions?

25 MR. SEXTON: Morris, Mr. Thigpen.

1 MR. THIGPEN: Morris is fine.

2 MR. SEXTON: Mr. Thigpen, I asked the
3 Director for California what his staff ratio was. I
4 believe he said six to one. What do you find that
5 to be on a national average for a state facility?

6 MR. THIGPEN: I think there is tremendous
7 variation in that. That may be somewhere, five to
8 six maybe, in the ballpark of an average. But you
9 are going to see tremendous variation in the states
10 among those ratios.

11 MR. SEXTON: Do you have any idea how many
12 states now fall under the ACA accreditation
13 standards? Do you have any idea?

14 MR. THIGPEN: I don't know what the number
15 is. I would say probably the majority of the states
16 now have some sort of accreditation process. There
17 are only a handful that have every component in
18 their system accredited.

19 MS. ELLIS: Thank you so much,

20 Mr. Thigpen. It has been very enlightening.

21 I'm drawn to the training that you are

22 suggesting, and I totally agree in terms of

23 information and education regarding federal laws,

24 local laws. But particularly taken with this

25 business of boundaries, which I think adds a whole

1 other dimension and we are talking about
2 relationships, and relationships within that
3 setting, which are so crucial, and again with the
4 impact on relationships outside of the setting which
5 reminds me once again we are looking at an enormous
6 situation here.

7 So I do take this, the dynamics of staff and
8 offender in the facility setting. I think I take
9 these suggestions and I totally agree with you, and
10 I thank you for them.

11 MR. THIGPEN: I might just add I think
12 some of the California representatives talked about
13 the two tapes that we have done that can be used in
14 orientation with both male and female inmates, and
15 these are excellent. They are very real. One of
16 them actually involves inmates. The others are
17 based on actual instances. It gives you a tool that
18 can be used in sitting down when inmates come into
19 the system and talking about this as an issue and

20 the kinds of things that can happen, both inmate on
21 inmate and also inmate and staff, in terms of those
22 relationships.

23 So I recommend those to you.

24 MS. ELLIS: Thank you.

25 MR. MCFARLAND: Mr. Director, I have one

1 question. I understand that overtime is a huge
2 issue in this California system, and that we combine
3 that with overcrowding and a staff that's been on
4 duty for 15 hours, going on 16 hours, it is hard to
5 keep the vigilance or maybe developing over
6 familiarity that you testified to.

7 What would you recommend, what would you say
8 to a system like CDCR where the budget is incredibly
9 stretched, the Legislature has declined to pass a
10 level of funding that the administration felt was
11 necessary, do you have some best practice for other
12 systems that are faced with very high overtime
13 because they can't afford full-time permanent staff?

14 MR. THIGPEN: Well, it's one of those real
15 difficulties, and I don't know that I can give you a
16 real answer as to how you solve that, other than if
17 you don't have the necessary staff to adequately run
18 the facility and you know you're sitting there as
19 executive with responsibilities for trying to ensure

20 that their facility is maintained as a safe and
21 secure facility both for staff and for the inmates,
22 then the pressure is certainly on you to provide
23 that overtime.

24 Now one of the things that I think sometimes
25 does happen in an agency is that the staff can

1 become dependent on that overtime for the wages, to
2 get their salaries up to a point that gives them a
3 more livable wage. That wage that is not
4 necessarily true in every every system because I
5 have seen in some where they talked about officers
6 that are making close to 100,000 because of the
7 amount of overtime that they get. But it is a
8 serious problem, and it's one that certainly I think
9 has to be put before the governing bodies, the
10 Legislature, the governor, and try to help them
11 understand the real problems that come from the lack
12 of those resources.

13 So that is not a very good answer, but it's, I
14 think, the reality that most administrators face in
15 those situations.

16 MR. MCFARLAND: Well, Director Thigpen,
17 thank you very much. I wonder if we can request
18 copies of both the Speaking Up video as well as the
19 juvenile ones that are coming out shortly.

20 MR. THIGPEN: Rather than have you take
21 all of those back, we will get those to you as you
22 go back.

23 MR. MCFARLAND: Thank you.

24 MR. THIGPEN: Thank you.

25 MR. MCFARLAND: The panel will be in

1 recess for about two, three minutes. Then the next
2 panel of witnesses will be convened.

3 (Panel 2 concluded at 11:30 a.m.)

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PANEL 3

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MR. MCFARLAND: The panel will reconvene.

4

This morning we have the privilege of hearing from

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Ms. Lorie Brisbin, who is the coordinator for the

6

Idaho Department of Corrections PREA work, as well

7

as the former Secretary of CDCR, Rod Hickman.

8

Thank you both for your time and your insights

9

and your candor. I guess we will start with

10

Secretary Hickman.

11

Oh, we've got to swear you.

12

(Oath administered by Mr. McFarland.)

13

MR. MCFARLAND: Thank you, Secretary

14

Hickman.

15

MR. HICKMAN: It's my pleasure to be here.

16

It's quite flattering that the panel would reach out

17

to me and ask for me to provide testimony to you as

18

you go forward in developing what I think is going

19

to be protocols, processes and change in

20 organizations across this country that have suffered
21 from not enough attention for many, many years. I
22 think that anything that I can provide you of
23 assistance, I really welcome the opportunity to do
24 that.

25 I left corrections in February of this year,

1 and I have had the opportunity to both reflect upon
2 my experience of 27 years when I was in corrections,
3 from the time I was a correctional officer to the
4 time I left as Secretary, leading the reorganization
5 of corrections in California to allow it to be more
6 thoughtful in the way it went about doing its
7 business, to allow it to be capable of using
8 evidence to make policy decisions and to influence
9 policy decisions in California. But I think in that
10 time of reflection I have also had the time to spend
11 in other states and kind of expand my horizon in
12 regards to those issues that face corrections across
13 the country, and, quite frankly, PREA is going to be
14 a significant watershed event, I think, in
15 corrections for years and years to come. I think it
16 is going to provide an opportunity for people to
17 really be clear about what we do in this country
18 regarding the detention and incarceration and return
19 of citizens of this country back to the communities,

20 back to our communities. So I think it is an

21 excellent opportunity.

22 The question you asked me to talk specifically

23 about are: What conditions, policies, practices,

24 protocols, training in prison either permit or even

25 promote sexual assault by inmates and staff upon

1 inmates? And then the other side of that question:

2 What are those things that inhibit the incidence of
3 those activities?

4 I am going to take a different tack that I
5 originally thought. I had the opportunity to listen
6 to the testimony of the panel that was before me,
7 corrections folks from CDCR who I will always
8 commend for doing a wonderful job. They've taken a
9 leadership role in many, many areas in California.
10 I commend John and the group that is still there
11 doing yeoman's work in California and Director
12 Thigpen from NIC.

13 I am going to pull back my yoke and go from a
14 different altitude in sharing with you what I
15 believe the response to these questions will be from
16 a different level. So I am going to take a 50,000
17 foot approach to this and deal with it from a
18 national perspective, not just those things here in
19 California, to share with you my experiences as both

20 with the Americans -- with ASCA and as member of the
21 Board of Governors for ACA, and how we approach this
22 from a professional standpoint across the country so
23 you have continuity in what we do

24 MR. MCFARLAND: That is the Association of
25 State Correctional Administrators and American

1 Correctional Association?

2 MR. HICKMAN: Yes, sir.

3 Of the policies which I think many people have
4 spoken to, that either inhibit or allow those acts
5 to happen, you have to clearly look at the housing
6 policies. You have to clearly look at how you
7 design, if you have the capability to design. You
8 have to clearly look at how you modify within
9 existing designs from a fiscal standpoint of the
10 plant that house people in the prisons across this
11 country.

12 Quite frankly, from a 50,000 foot level from a
13 Secretary of Corrections with an 8.2 billion budget,
14 I can tell you almost unequivocally ever secretary
15 or commission across this country has a significant
16 problem in maintaining its facilities. So when we
17 talk about whether you can go to the fiscal
18 environment of the legislature in these states and
19 say I need X to accomplish Y regarding PREA, when

20 you know that you can't replace your roofs, is

21 problematic.

22 So as you engage with people that are leading

23 correctional organizations across the country, I

24 think that engagement has to include what is the

25 execution of it, how can you really do it and what

1 does the environment in which you live in order to
2 achieve resources allow you to accomplish it.

3 If you talk about technology, every
4 commissioner of corrections across this country
5 probably has a wish list an arm long of those things
6 they wish they could implement that would improve
7 upon the safety of both the facility and the staff
8 and inmates that work there. But how do you do that
9 within a fiscally responsible environment? How do
10 you do that within a political environment that,
11 quite frankly, sometimes is not going to let you
12 make that investment?

13 MR. MCFARLAND: Are you talking cameras?

14 MR. HICKMAN: Cameras, RFI technology --

15 MR. MCFARLAND: RFI?

16 MR. HICKMAN: Radio frequency wrist bands.

17 There is technology that is out there available to
18 really impact the incidence of violence and
19 incidence of rape and sexual misconduct in the

20 prisons across this country.

21 The question is: One, are you going to find

22 the policy-makers that are in the place to make the

23 decisions to fund it to have the political will to

24 do it? It is a very difficult, very difficult

25 environment in which the commissioners and

1 secretaries are working on a day-to-day basis and
2 fighting for a finite amount of resources within the
3 general fund to accomplish that.

4 You talk about design and you talk about
5 staffing. I overheard the conversation with
6 Director Thigpen about what that staffing model
7 should be. But I think if you go look at it from a
8 higher altitude to get a clear and comprehensive
9 view of what staffing should be, whether they be in
10 detention facilities at the county level or state
11 facilities at the state level or community
12 correction facilities. There is a lot of input that
13 you need to put into that process of staffing. What
14 is the design? What is the deadly force policy?
15 What type of forces are allowed to be used in
16 regards to the ability to control a large scale
17 incident?

18 John Dovey talked about the ratio in
19 California being six to one. California, generally,

20 has been 48th in the states in regards to staffing
21 ratio. But California was one of the few states
22 that had designed prisons with lethal force inside.
23 Very few prisons across the country have lethal
24 force deployed inside the secure perimeter. That
25 was a clear and conscious decision by people that

1 made the decision in the design process to do that.

2 So I think when you look at staff and what can
3 allow you the ability to both impact or reduce the
4 incidence of misconduct and sexual rape in prison,
5 it has a lot to do with those policy decisions made
6 in the design process.

7 Policies in the area of classifications. And
8 I think one of things that I'm really glad to see is
9 the fact we are having a conversation about prison
10 rape elimination in this country. That, in fact,
11 will drive a lot of the changes that will happen.
12 So there needed to be a vehicle of change. And the
13 vehicle of change very well might be the PREA Act
14 that makes states and local municipalities look at
15 things from a different lens than they ever looked
16 before because of the advent of PREA there. So I
17 think it is a vehicle of change that we need to
18 embrace and use. But in doing so, we have to do
19 that in a thoughtful way.

20 Movement policies. How do you move inmates to
21 and from? It is a very interesting thing for me as
22 a practitioner for many, many years. As I came from
23 the community into corrections, I wasn't always a
24 corrections professional. I was a community member.
25 I become a correctional officer. I started to look

1 at the way we do things and often wondered why do we
2 do things the way we do them.

3 If you look at the way we search people,
4 there's never been any need before this conversation
5 to have any kind of privacy for body searches.
6 Unclothed body searches clearly have been done in
7 large scale rooms. They still are. It is a matter
8 of staffing and capability of doing that.

9 MR. MCFARLAND: That is unclothed?

10 MR. HICKMAN: Unclothed body searches.

11 But the one thing I have to say that is of the
12 most importance to me is, is there a culture in
13 detention, corrections and supervision of people
14 that causes dehumanization of the offender? That is
15 truly a question. Because a deterrent for me as an
16 individual in society is that as soon as you told me
17 that I had to bend over, spread the cheeks of my
18 rectum and cough, I would have been cured. I would
19 never be back. But I think when it is not -- it is

20 a safety need. But then I think it needs to be
21 looked at with a different lens as we go forward
22 with an opportunity to review the policies,
23 procedures, practices that we use. Can you do them
24 differently? Can you do them in a way that is not
25 inadvertently degrading, in a way that allows people

1 to have dignity and respect as they are doing the
2 time for the crime that they committed in society?
3 We look at movement, classification and housing.

4 Investigative oversight. What are the
5 protocols that are used to investigate? John Dovey
6 talked about the disciplinary matrix and the code of
7 silence and the things that have gone forward in
8 California that I think were precedent-setting and
9 the willingness of corrections professionals to say
10 things that needed to be said.

11 Now the result of that dialogue is going to be
12 the policies and procedural changes that come as a
13 result of that. But the willingness for
14 correctional professionals to step forward and say,
15 "Yes, we believe there is a code of silence and,
16 yes, there is discipline if you don't tell what you
17 do know. There will be discipline as a result of
18 that." As John defined as the paycheck protection
19 plan.

20 Collective bargaining agreements. Director
21 Thigpen talked about how you have to bring union
22 folks to the table. You really do have to bring
23 those folks and collaborate in order to achieve.
24 But what has happened, in my view, that you moved
25 from the ability to impact salaries and wages and

1 terms and conditions of employment to political
2 activism.

3 So are you, in fact, as a secretary or
4 commissioner capable of making collaborative
5 decisions with your representatives when, in fact,
6 the game is not being played in your boardroom? The
7 game is being played on the air and the televisions
8 of the people of California. Where is the game
9 really being played and are you in a position to
10 really impact the result?

11 And sometimes, quite frankly, the
12 commissioners and secretaries are not in a position
13 to do that. They try to stay apolitical. Quite
14 frankly, the majority would like to be apolitical
15 and make comprehensive policy decisions based upon
16 what the practices to improve the organizations are.
17 But you can't remain apolitical as I live to tell
18 you myself. But if you could, you would.

19 Where is the real game being played and what

20 is the real result that everyone that is in that

21 game really wants?

22 I think that as you look at policies,

23 procedures and relationships of collective

24 bargaining units across the country, and I had

25 Secretary Pierce, we're dealing with the same type

1 of challenges that I dealt with as Secretary in
2 regards to how I was being depicted or how I was
3 being identified as moving forward with the
4 organization when it is not essentially the truth.

5 Searching practices, culturally. Director
6 Thigpen talked about culture. What is the culture?
7 I think when you look at a culture of prison in the
8 detention facilities across the country, we have to
9 step back again and have a little broader
10 perspective. What is the culture of society? What
11 does society really expect to happen to someone when
12 they are incarcerated? What is an acceptable
13 result?

14 I very vividly remember a conversation I had
15 when I was a captain with a correctional officer
16 that had worked in a unit where there was an inmate
17 who was mentally ill that continually ate the flesh
18 on his arm. The officer came down; he had an
19 appointment with the captain. Now you have to

20 remember in the culture I am a captain. I have two
21 bars. I am the head custodial officer. So this
22 officer had enough courage to come to my office.
23 He came to my office because he wanted to
24 resign. He came in and said, "Cpt. Rick, I need to
25 resign."

1 I said, "Why do you need to resign?"

2 He says, "Because this guy's mentally ill. We
3 take him to the clinician. They give him his
4 medication corrected and he doesn't do it any more,
5 and then three or four days later he doesn't take
6 his medication and he does it again. We take him
7 back down there and he does it again." He says, "I
8 can't do it anymore. I just can't do it anymore."

9 I tell him, I told him, "I am proud of you
10 because I have hundreds of people out there that
11 believe that is normal, that they have to become
12 callous to that real human tragedy that's existing
13 in the prison. So when you look at the culture of
14 corrections, the culture of corrections and prisons
15 in this country is nothing more than a microcosm of
16 what the impact of society is.

17 So what is supposed to happen when someone
18 comes to prison? Is it what you see on Oz? Is it
19 supposed to be what you see on Prison Break? Is it

20 supposed to be The Shawshank Redemption? Is it
21 supposed to be the movies that are depicting what
22 the prison non-reality is? So that is what
23 influences people in the policy area.

24 So when you talk about are you capable of
25 doing things from a policy standpoint, the

1 commissioners and the secretaries are going to have
2 to respond to the political environment and who
3 influences those people. That is the real question
4 you have. I hope I am not too far out on those
5 issues, but I think those issues have been really
6 clearly identified by the panelists before me.

7 In the area of training on both sides of the
8 equation, inhibiting or prohibiting, investigative
9 training is of the utmost importance. The
10 investigative training needs to be far more
11 comprehensive, to talk about the prosecutors for the
12 DAs or investigators for the District Attorney's
13 office, if they, in fact, have them.

14 What is the District Attorney's discretion in
15 regards to prosecution? The training has to happen
16 in those areas so that if you are really going to
17 accomplish it, it has to be done in a way that is
18 collaborative with those District Attorneys and
19 those local municipalities and the prisons in a way

20 that they understand what the result will be. And

21 there is a finite amount of prosecutorial dollars.

22 There is a finite amount of it, so we have to talk

23 about what that fiscal impact is. What are the

24 values of those people that are doing them?

25 So in closing, I will say this: to accomplish

1 what really needs to be accomplished in the change
2 of corrections under the auspices of PREA, it will
3 take a societal change, societal education. It's
4 going to clearly take leadership, both for those
5 people that are in detention leadership positions
6 and those people in political positions that oversee
7 the operating leadership of detention facilities.
8 It is going to take political courage. It is going
9 to take the willingness of people to have a
10 conversation that is not politically correct, but is
11 real. It is going to take the reality that you
12 can't continue down the path that we are without
13 impacting it fiscally. What you are willing to pay
14 to accomplish what we want to accomplish in the
15 improvements of prisons across the country. It is
16 going to take a realization for us to talk about.
17 Do we dehumanize people when they are incarcerated?
18 Do we or not? It is going to take responsibility
19 for the associations of corrections to be at the

20 table for the American Association of State
21 Corrections Administrators, American Correctional
22 Association, criminal and juvenile justice
23 administrators, all administrators in the DAs
24 administration; all those folks have to be able to
25 talk about the true definition of punishment.

1 Is punishment incarceration as we stated or is
2 it the experience of the punishment? That is the
3 true sense that we have to talk about in order to
4 change those. And the bottom line is going to take
5 execution. Government is great in grandiose
6 schemes. We've got to excute. We have to put some
7 metrics behind it to say these are the things that
8 you should do, these are the metrics that you should
9 have, these are the ways we are go to measure that,
10 with solid empirical data.

11 One of the things that California did was to
12 change its mission to improve public safety through
13 evidence-based contravention and recidivism
14 reduction strategy. Evidence does not agree all the
15 time with politics. It is an amazing phenomenon.
16 So one has to sort out the noise, what is real and
17 what is anecdotal and what is true metrics. So
18 there has to be education of the media, of the
19 political environment. There has to be leadership

20 taking responsibility of telling the true story and
21 willing to be courageous and say what is really
22 going on in prison, and we have to talk about what
23 the catalyst of change is going to be.

24 My belief is, now that I've been away from it
25 for a while, that the catalyst is change. Whether

1 the people like it from a policy or program
2 standpoint, the catalyst of change very well might
3 be fiscal. It very well might be can we continue
4 down the path that we are going and sustain it
5 fiscally. And the answer to the question is no.

6 So whatever that vehicle, change needs to be.
7 I think that the catalyst for that change will be
8 whether or not it is going to be fiscally
9 sustainable.

10 So I hope I have been helpful in my comments.
11 I don't know if I answered your questions. I'd
12 appreciate follow-ups to probably do that in more
13 detail. I think a lot of the information that you
14 asked me I think was provided by other panelists. I
15 wanted to just give you a different perspective from
16 my point of view.

17 Thank you very much.

18 MR. MCFARLAND: Thank you very much,
19 Mr. Hickman.

20 MS. BRISBIN: My name is Lorie Brisbin,
21 and I am the PREA coordinator for Idaho, and I want
22 to make that clear, that it is not just for our
23 department. The grant that we received under the
24 first round of Bureau of Justice grants was a
25 cooperative program and project between Idaho county

1 jails, Idaho Department of Corrections and the
2 juvenile justice department in our state.

3 We had from the very beginning of our
4 implementation process a real mission, to make this
5 a comprehensive program. And I do want to report I
6 have had excellent success with our county jails.
7 They adopted a Chapter 12 into their prison rights
8 last December, and so they have been just right on
9 board with this all along.

10 I do want to recognize as some of the
11 panelists before we are done, I have had wonderful
12 help from NIC and the Moss Group, been fantastic
13 resources. We were recipients of a TA from NIC, and
14 that provided us with an opportunity to have a
15 multi-disciplinary work group that came together.
16 We had the same partners in that group. We had
17 county detectives. We had an investigator from our
18 own department. We had some from the prosecutor's
19 office. We had a victim coordinator from Washington

20 and several PREA coordinators from several states.

21 It was an excellent way to look at some of the

22 issues that other panelists have talked about.

23 MR. MCFARLAND: This was based on

24 technical assistance?

25 MS. BRISBIN: Technical assistance from

1 NIC.

2 I would like to divert from testimony. I have
3 heard so many things said this morning, that I would
4 like to kind of flush out some things since you do
5 have a copy of my testimony.

6 We also really looked at a cultural issue
7 here; how are we going to get staff on board with
8 this because one of the first things they said to me
9 is, "You are never going to get staff to embrace
10 this. They are going to think it is a joke. They
11 aren't going to take it seriously." That has not
12 been my experience at all.

13 In turn they said, "You are not going to get
14 inmates to take it seriously. They are going to use
15 it as manipulation. They are going to use it as an
16 opportunity to get each other in trouble and to
17 manipulate staff." I am happy to report that hasn't
18 happened either.

19 What has happened is that the staff have been

20 able to see the usefulness of identifying predatory
21 inmates in our system, and I really tried to focus
22 on that as an opportunity to document and identify
23 behaviors that make those individuals predatory
24 because if you reduce the number of those people who
25 are free to move about in the general population,

1 you immediately reduce victims you are going to
2 have. It is not going to solve everything, but I
3 think -- I can't emphasize enough how important it
4 is to identify those predatory people and house them
5 appropriately.

6 We have had a couple of incidents in our state
7 where people were moved, information didn't follow
8 them rapidly enough, and they immediately created a
9 new victim. So I made a huge effort to pull
10 information out about incidents that we have had in
11 the past to identify behavior issues that have been
12 documented for certain individuals.

13 And I would also like to say getting inmates
14 to embrace this idea. I gave you a copy of our
15 handbook. All inmates receive that handbook. As of
16 July 2005, we had completely educated our entire
17 inmate population. We did that in a number of
18 different ways, depending on the custody level and
19 the structure of each facility.

20 But we were aware that NIC was developing
21 orientation videotapes, but we didn't feel like we
22 could wait for those to come out. We introduced the
23 handbook systemwide, and then the following
24 February, when the tapes actually became available,
25 they are now being shown in our receiving units in

1 both male and female facilities as part of the
2 education process. It's been a very useful tool,
3 the handbook has, to go back to inmates who were
4 engaged in what may look like consensual behavior,
5 to clarify some department policies. It has been a
6 good education tool for the inmates.

7 Because 98 percent of our inmates return to
8 our communities in Idaho, reentry is a huge issue
9 for us. We will get things from very front end. We
10 have this person who is a predator in the community
11 who is now in our institution who is possibly going
12 to be a predator while we have them inside. How are
13 we going to successfully manage them? How are we
14 going to release them safely back into the
15 communities?

16 I am pleased to say that we did receive
17 funding on the second half of the grant of PREA
18 grants. That is going to be the focus of that part
19 of the project. We are going to look at the whole

20 reentry issue. I have been able to identify in our
21 system through the statistics that we do have that a
22 third of our incidents are created by people who
23 have previously been convicted of a sexual offense.
24 I looked at that as kind of a target population. Is
25 it right for us to release those individuals, having

1 tolerated that continuous behavior while
2 incarcerated?

3 MR. MCFARLAND: Sorry. If I can jump in
4 and clarify. A third of the incidents in Idaho in
5 what year?

6 MS. BRISBIN: Overall. I actually pulled
7 ten years worth of statistical data.

8 MR. MCFARLAND: A third of those incidents
9 were perpetrated by individuals who had been
10 convicted of a sexual assault?

11 MS. BRISBIN: Previously.

12 MR. MCFARLAND: While incarcerated?

13 MS. BRISBIN: They had previously been
14 convicted on the street. They came to us with that
15 conviction.

16 MR. MCFARLAND: Thank you.

17 MS. BRISBIN: One of the things that I did
18 as security staff early on, was I tried to sell them
19 as a security opportunity. We do the same thing

20 with inmates. We introduced our program as
21 maintaining dignity. We tried to emphasize the fact
22 that they do have the right to do their time with
23 dignity, with respect to each other and from staff.
24 And, you know, I won't say it's reduced the number
25 incidents, but I think it certainly has supported

1 the number of reports that we get.

2 So I would like to talk about our victims for
3 a minute. One of the questions here was: Who
4 typically is going to witness this?

5 Most of our reports come through third
6 parties, not necessarily the victim coming forward,
7 not necessarily security staff detecting what
8 happened. It will be a third party, another inmate,
9 somebody from the outside. I think I want to
10 emphasize how important it is to have multiple
11 reporting opportunities from people to bring that
12 information forward safely. Many times what's
13 happened is we will have a report that is five, six,
14 seven, sometimes ten years old. What do we do with
15 that? Staff was very confused initially; it is not
16 an incident offense. It is not something that
17 happened within the 72-hour frame. It is a report
18 that is being brought forward to us.

19 We take those very seriously. We encourage

20 our staff to document any sexual behavior
21 information that comes their way no matter how old
22 it is. What typically is happening is a victim will
23 now see his perpetrator returning to the system.
24 Suddenly that person is now showing up in the
25 housing unit where they were never expected to be

1 there. Suddenly they are no longer safe. They may
2 have felt safe up to that point. Now they see that
3 individual back on the compound. So we do take
4 those reports very seriously.

5 Obviously, we can't move forward with any
6 disciplinary or prosecutorial efforts, but it all
7 adds up to documenting that behavior history, and
8 many times we have been able to confirm that there
9 was some type of assault, but it just wasn't
10 recognized as a sexual assault.

11 MR. SEXTON: How many incidents are you
12 talking about?

13 MS. BRISBIN: In Idaho in the last 12
14 months we have had eight incidents that we could
15 substantiate that were actual, not necessarily
16 violent rapes, but coercive, intimidation, forced
17 sexual.

18 MR. SEXTON: In 2005, you report in this
19 federal report 15 incidents; only three

20 substantiated and 12 unfounded.

21 MS. BRISBIN: Right. That was 2005. I am
22 talking in the last 12 months.

23 In 2005, as you probably already gathered from
24 the previous discussion, data collection was not
25 very good because people didn't have initially those

1 definitional parameters. And in the federal survey
2 we do have that. We know what they are looking for.
3 We are measuring that as per the requirements. When
4 we report this year, I will feel very comfortable
5 about the data that we will report, as far as what
6 those incidents were.

7 I think getting staff to take this seriously,
8 desexualizing the environment, the support of upper
9 management, all of those things are really key here.
10 If our former Director, Tom McClare, had not come
11 out with a strong statement that he played when we
12 began this process, I don't think we would have been
13 successful nor would we have moved forward rapidly.
14 When he went to the senior management staff and the
15 wardens and said, "We will do this and we will do
16 this now," it had a dramatic effect.

17 So I think that is very important that
18 directors and upper management understand that they
19 need to send that message down the chain.

20 Just a couple of other kinds of small issues
21 that have come my way. I believe that you had asked
22 a question about supporting staff. We have run into
23 significant problems with trying to address survivor
24 issues. When there is a staff social misconduct
25 incident, and we do have them, we have prosecuted

1 both male and female correctional officers and other
2 staff, successfully I might add, we don't have any
3 plan or method in place to address the concerns and
4 the reactions of the staff members that are left
5 behind. And part of that is there is so much fear
6 that surrounds pending investigations and human
7 resource issues that people are afraid to discuss it
8 in any way. I really am struggling right now with
9 coming up with a way of addressing that, because I
10 personally feel like there's got to be a way we can
11 do a process group with those individuals, allay
12 their fears a little bit, allow them to discuss
13 their feelings of guilt and concern over what has
14 happened. Whether I will achieve that we'll see.

15 MR. SEXTON: Is they're not a liability
16 issue there?

17 MS. BRISBIN: With discussing it?

18 MR. SEXTON: Not. On the civil liability
19 issue with regard to the family or person that was

20 the victim turning around to sue the state. Is that

21 a concern of leadership?

22 MS. BRISBIN: That is part of the problem.

23 What happens when you don't address the concerns of

24 staff who are left behind is rumor and innuendo are

25 out the roof. And I have seen in one particular

1 case we had basically an entire housing unit staff
2 in that housing unit that all had to be moved from
3 that housing unit because the environment that had
4 been created by what had happened there was so
5 negative and difficult for them. It doesn't have to
6 be that way. I really believe there is a way to
7 negotiate through that, not discuss the actual
8 pending investigation, but be able to address their
9 own concerns.

10 MR. SEXTON: I guess my question would be
11 is leadership saying no or are the lawyers saying
12 no?

13 MS. BRISBIN: Just a general fear, an
14 overall fear, and it is coming from legal. They
15 don't want to touch human resource issues.

16 You are over here laughing.

17 MR. HICKMAN: I have a lot of lawyers.

18 MR. MCFARLAND: Let's strike that from the
19 record.

20 MS. BRISBIN: And I have a great
21 appreciation for that, but I don't think it solves
22 the problem.

23 And another thing that I would just like to
24 mention is victim properties issues. Someone this
25 morning alluded to boxer shorts for females and how

1 ridiculous that was to have that in policy and not
2 considered that might need to be worded a little
3 differently.

4 When we have a victim, we immediately
5 transport that individual to our medical unit. An
6 assessment is done on whether they are appropriate
7 to transport to the hospital. They are taken to our
8 emergency room for a SART examination. We have
9 staff for that in the county where most of the
10 prisons are. They are treated exactly like a victim
11 on the street in every way that we can. Obviously,
12 there are security staff with them. They are
13 shackled, but we try to be cognizant of what the
14 victim's rights law say in the state.

15 One of the things that we never addressed in
16 that was what do we do with their property. You are
17 only allowed a certain number of changes of
18 clothing. What do we do with that? The person
19 really has to have some very fundamental things

20 taken care for them.

21 There was a discussion earlier about what
22 policies we need to look at, it is almost all of
23 them. This touches every facet of an inmate's life,
24 even to the activity on their inmate bank account.
25 We can find predatory behavior, behavior

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

5 MR. MCFARLAND: Thank you very much.

6 MS. BRISBIN: Thank you.

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

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

20 stays or in juvenile facilities?

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

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

23 education of staff and it's about zero tolerance

24 policy for sexually charged environment. And if

25 jail staff understand that, we all have the same

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

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

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

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

20 jails, in juvenile facilities? Do they have a

21 minimum standard for wage in those areas?

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

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

24 know.

25 MR. SEXTON: Idaho is one of the states

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

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

8 MR. SEXTON: Thank you.

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

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

20 that are victimized.

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

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

1 with that.

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

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

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

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

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

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

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

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

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

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

10 Has that been implemented?

11 MS. BRISBIN: Yes.

12 MR. MCFARLAND: Favorably so?

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

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

25 MR. SEXTON: That is an accepted practice

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

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

6 MR. SEXTON: Probably so.

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

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

20 Referring to the maintaining dignity handbook

21 for inmates.

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

23 fact, any of the allegations or incidents that we

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

25 working on this project, I have taken that

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

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

10 MR. SEXTON: Treated by who?

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

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

20 MS. BRISBIN: In the community.

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

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

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

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

19 MR. MCFARLAND: How about any policy

20 regarding sexually explicit magazines or literature

21 books?

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

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

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

25 Other people have decided to piggyback on that and

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

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

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

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

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

20 you can, you should.

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

24 MS. BRISBIN: Yes.

25 MR. ELLIS: Where you actually attempt to

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

3 MS. BRISBIN: I am not sure where.

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

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

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

19 But all those subtleties that come into this.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13 MR. MCFARLAND: Who else is included?

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

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

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

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

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

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

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

20 into the facility?

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

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

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

3 MR. MCFARLAND: Ms. Hardy.

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

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

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

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

25 But when the person gets raped or alleges

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

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

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

19 MR. SEXTON: In the California state

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

23 MR. HICKMAN: You have a protocol.

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

1 MR. HICKMAN: Yes.

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

5 MR. HICKMAN: Right.

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

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

10 MR. MCFARLAND: Ms. Still.

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

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

20 Thank you very much.

21 The panel will be adjourned for lunch until

22 2:00 p.m. sharp.

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

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PANEL 4

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MR. MCFARLAND: Panel 4 has come to the

4

table, and we will be privileged to hear from Mr.

5

Thomas Clinton as well as Kathy Hall-Martinez who is

6

Co-Chair of the Stop Prison Rape, and Cynthia Totten

7

is also here.

8

MS. TOTTEN: Just as moral support.

9

(Oath administered by MR. MCFARLAND.)

10

MR. MCFARLAND: MR. CLINTON, you are among

11

friends. I would -- I guess not everyone has read

12

this, Tom, or has heard this. We have.

13

MR. CLINTON: I guess I have ideas or

14

concepts that may be able to help you out a lot,

15

take a peek inside the looking glass. I would like

16

to share that with you.

17

MR. MCFARLAND: Don't feel any need to

18

read everything in your testimony. As I say you may

19

want to use your time. We are not pressed for time.

20 As much time as you want.

21 MR. CLINTON: Good afternoon. I truly
22 appreciate the opportunity to appear before the
23 national Review Panel of Prison Rape today and hope
24 that by sharing my story with you I can help end the
25 sexual victimization of prisoners.

1 As a gay male of small stature who was
2 convicted of a nonviolent offense, I found that I
3 was targeted for sexual harassment and sexual abuse
4 throughout my incarceration. Prison officials did
5 little to provide protection for me, despite the
6 numerous complaints I made. Even after I was
7 victimized, I was treated in a punitive manner to
8 the point where I almost felt it was pointless to
9 speak out for my rights.

10 On November 23, 2004, I was raped by a newly
11 arrived inmate at Trinity River Conservation Camp in
12 Lewiston, California. I had been assigned to clean
13 the bathrooms, and I was finishing up and the inmate
14 came into the showers and said he was assigned to
15 help me. I did not question him or think anything
16 of it. But he caught me off guard and attacked me.
17 He pushed my face into the corner, causing a large
18 cut across my cheek and forced himself inside of me.

19 That evening, still in the state of confusion

20 and shock, I tried to tell one of the correctional
21 officers about my assault. As I started to tell him
22 what happened, the officer told me not to say
23 anything further, but wait until the following
24 morning and then I can talk to the sergeants. That
25 night I received no medical attention. I was not

1 interviewed about the assault and no evidence was
2 collected. It was as if I was expected to go on
3 with my daily routine, pretending nothing had
4 happened.

5 I should have been taken to the hospital that
6 night and the investigation process should have been
7 started immediately. Instead, I sat in the dorm,
8 open dorm, afraid of my assailant and worrying about
9 the injury to my rectum which was bleeding, and the
10 cut on my cheek was swollen and bruised. I was in
11 physical pain from the assault and was trying to
12 contain the confusion, terror and hopelessness I
13 felt. I was afraid that if other inmates noticed
14 that something was wrong with me and they would
15 guess I had been raped and I would continue to be
16 assaulted. I didn't sleep, but instead sat up the
17 whole night wondering how this could happen, why the
18 officers weren't doing anything to help me and what
19 was going to happen to me.

20 Not really knowing what to do or how to demand
21 my rights, I waited until the following morning to
22 make the report of the assault. Unfortunately,
23 rather than take a report, the sergeant in charge of
24 investigation pressured me to sign a form stating
25 that no assault had taken place, that nothing had

1 happened between the other inmate and me and that we
2 were not enemies.

3 He told me that unless I sign the form he
4 would have to transfer me and that I would lose all
5 my good behavior credits since being at the camp.
6 Out of fear that my release date would be delayed, I
7 complied with the sergeant, but the sergeant still
8 transferred me out of the minimum security camp and
9 sent me to a California Correctional Center in
10 Susanville, where I knew I would be put in
11 segregation.

12 The rapist and I were transferred to
13 Susanville in the same vehicle, and, as we arrived
14 at the gate of the facility, the correctional
15 officer stepped out of the SUV leaving the rapist
16 and I alone and giving the rapist an opportunity to
17 threaten me. He told me that I better keep my mouth
18 shut. For trying to make a report of the assault I
19 was being treated as if I had done something wrong

20 and was in fear for my life because of the
21 assailant's threat. Although I wasn't aware of it
22 at the time, I would eventually lose my good
23 behavior credits solely because of the report of
24 sexual assault.

25 I thought about not saying anything else about

1 the attack and out of fear that I would only cause
2 more problems for myself. But when I got to
3 Susanville, I told the watch commander what
4 happened. He took down my statement after informing
5 me that the sergeant at the conservation camp hadn't
6 mentioned anything about the assault. He then told
7 me that I had to be placed in protective custody
8 pending completion of the investigation.

9 When I was taken in for my intake check-up,
10 the Susanville medical staff processed me while
11 other inmates were lined up within earshot of --
12 earshot to receive the medication, which made it
13 impossible to explain my situation without further
14 publicizing myself as a rape victim. I also worked
15 under the assumption that the medical staff had been
16 made aware of what had happened, and it was not
17 necessary for me to go out of my way to explain
18 anything further. I later found out that the
19 medical staff was never told about the assault and

20 thus did not know that they were supposed to have
21 done the sexual assault exam. This entire situation
22 could have been alleviated had I been given access
23 to a competent medical exam.

24 Most survivors of sexual assault in prison do
25 not want to publicize that they have been raped in

1 fear of becoming more of a target. I suggest that
2 procedures be placed and correctional officers be
3 properly trained to carry them out so the victim of
4 assault can get the confidential medical attention
5 they need without further jeopardizing their safety.

6 At this point I was placed in administrative
7 segregation and lockdown with no programming, but
8 still I had not been properly examined and no rape
9 kit had been performed. Several days went by, and
10 on November 27 of 2004, I received an envelope that
11 contained a confidential memorandum detailing my
12 statement of the assault. It was a memo prepared by
13 the intake officer and was supposed to remain
14 confidential. In the memo the officer stated that
15 he believed that I had been a victim of a sexual
16 assault and that the rapist had a history of violent
17 and dangerous behavior. I was shocked to find out
18 that the correctional officers had known that this
19 was a dangerous predator and yet they had placed him

20 in a housing unit with me, a nonviolent offender.

21 On December 3rd, 2004, I was released into

22 general population. But on December 6, officers

23 realized that the rapist received a copy of the

24 memo, and I was sent back to administrative

25 segregation for my protection. Because a copy of

1 the memo that had been delivered to the perpetrator
2 was never recovered, officials believed it was
3 circulated among the inmates in general population,
4 thus making me a target of further sexual assault.
5 I did not want to be put back in protective custody
6 due to my previous experience and that I would be in
7 lockdown often going days without getting any daily
8 hour recreation time.

9 While in administrative segregation, inmates
10 are required to get an hour recreation outside of
11 their cells every 23 hours, but the correctional
12 officers would often deny me this right. Thus,
13 another recommendation that I have is that CDC is
14 compelling victims of sexual assault be placed in
15 protective custody is a bad policy. It acts as
16 punishment and only adds to the sexual assault
17 victim's trauma.

18 There needs to be a less punishing form of
19 protective custody for sexual assault victims and

20 automatic placement in administration segregation.
21 Because the correctional officers knew they were at
22 fault for releasing the confidential memo in the
23 general population, their attitude towards me became
24 more hostile. They began referring to me using
25 derogatory words such as "fag" and "queer." I was

1 constantly being humiliated by staff, especially in
2 the presence of inmates. The ordeal went on for
3 several months, and I felt the correctional officers
4 were punishing me on a daily basis, despite the fact
5 that I never had any disciplinary problems.

6 For example, they kept me from acquiring
7 grievance forms. Every Thursday an officer would
8 come by with a cart with different forms, but nearly
9 every time I requested a grievance form I was told
10 they had run out. Other times they told me they
11 would tell me they didn't have any more pens. Once
12 I was finally able to acquire these forms, they
13 would somehow be lost when I submitted them. Seven
14 different times I submitted forms, and I never
15 received the required confirmation of receipt. This
16 led me to believe that the officers who took the
17 forms from my hands weren't submitting them to the
18 appropriate authorities. How could I exhaust my
19 administrative remedies if I was being denied access

20 to my first step of the grievance process?

21 What I believe was another act of retaliation

22 in this transfer from Trinity River Conservation

23 Camp to the facility at Susanville, all of my

24 personal belongings were lost. Officers told me

25 they had been misplaced, but I later found out that

1 my box of belongings had never been picked up from
2 the receiving office despite the fact I continuously
3 asked for it.

4 The retaliation by officers included denial of
5 medical care as well. The facility was aware of the
6 chronic pain that I suffered in my legs for several
7 years now, and they knew that the condition required
8 me to take pain medication. Still the medical
9 technician refused to provide the medication,
10 although I requested it, and there was no legitimate
11 reason to deny me. I believe that he was going -- I
12 believe he was doing it in retaliation for my
13 attempting to file grievance against his fellow
14 officers.

15 Making the situation worse, it was winter and
16 I was placed in a cell near the back door of the
17 unit. Every time the door opened, ventilation would
18 blow the winter air directly into my cell. Because
19 of the problems with my legs, I requested a cell

20 transfer. But they didn't want to move me and
21 instead left me in the cell with a thin foam
22 mattress and a thin blanket. The cell was so cold I
23 could put my mouth near the walls of the cell to
24 keep it chilled and could breathe on the small
25 window and write the word "cold" with my fingers.

1 I repeatedly requested a thick mattress and
2 heavier blanket to alleviate the pain I was still
3 experiencing from the rectum as a result of the
4 attack, but I would watch the thick mattresses and
5 extra blankets were being distributed to other
6 prisoners, and empty cells further from the back
7 doors would become empty and full again as I was
8 passed up.

9 During this time I knew my legal mail was
10 being opened because all my envelopes I received had
11 been opened using a razor. This was being done
12 before the letters ever reached me. Although I
13 asked the correctional officers not to pre-open my
14 legal mail, they continued to do so. The Susanville
15 correctional officers also kept all my self-paid
16 magazines and subscriptions, which kept me in a deep
17 sense of isolation and with nothing to do in my cell
18 all day but ponder the senselessness of my
19 situation.

20 When I was assaulted, I suffered a torn rectum
21 and had been continuously bleeding, but months went
22 by before I was able to [verbatim] a proper
23 examination and a rape kit was performed. After my
24 initial attempt to get medical help right after the
25 assault, I gave up. I would have told one of the

1 correctional officers about the need for medical
2 attention, but segregation cells are all less than
3 12 inches apart, which had made it very easy for
4 other inmates in the area to hear what I was saying.

5 In January 2005, while still in physical pain
6 from the assault, desperation forced me to figure
7 out how to ask for a confidential medical exam. I
8 wrote my request on a piece of paper and requested
9 it and presented it to the sick call doctor. I
10 wrote that I was raped at a camp, that I had stopped
11 bleeding, but that I was still in pain. The doctor
12 looked shocked and immediately informed the medical
13 technician on duty. While in the presence of other
14 inmates, the medical tech yelled we have a rape,
15 loud enough that everyone in the unit could hear. I
16 was humiliated and frightened to the point that I
17 put the note I had to the doctor in my mouth and
18 chewed it up and swallowed it. I wanted to get rid
19 of the evidence that could put me in further risk.

20 This may sound extreme, but I think people on the
21 outside cannot comprehend how vulnerable someone --
22 some of us are to further attacks.

23 At this time I was interviewed, given an exam
24 and sent to the medical ward. Now, nearly two
25 months after the assault, the rape kit was performed

1 and concluded there was still some damage to my
2 rectum. Considering the amount of time that had
3 elapsed, it was not surprising that no DNA evidence
4 was collected tying the rapist to the crime. After
5 the examination I was sent back to administrative
6 segregation.

7 In February 2005, nearly three months after
8 the attack I was finally given the opportunity to
9 speak to my social worker in charge of my case, and
10 I hoped things might get better. But he was
11 antagonistic and went as far as to say I had asked
12 for it and that I got what I deserved for choosing
13 to be gay. At this time the social worker informed
14 me that no charges would be filed against the rapist
15 and that he had been placed back into general
16 population while I would remain in segregation. Up
17 until this point I had still assumed that the rapist
18 would be charged just like I had initially assumed
19 that I would be given an examination promptly and

20 that my medical needs would be addressed.

21 Indeed -- excuse me. I'd also like to address

22 the issue of housing. At one point I had to get a

23 new cell mate, but I was reprimanded for refusing an

24 inmate that was obviously interested in having sex

25 with me, since during my interview process he had

1 been making several sexual explicit questions.

2 During the time, same round of interviews, I met a

3 57-year-old man with whom I got along with and who

4 obviously was not a threat to me, and I requested

5 that we be placed together and explained my reasons.

6 I told the officer that the first inmate wanted sex

7 with me and I had feared he might attack me. But

8 the officer filed a disciplinary infraction on me

9 for opposing sexually threatening inmate and as a

10 result of trying to protect myself from further

11 victimization, thirty days were added to my

12 sentence.

13 I believe that the process by which inmates

14 get paired can easily be changed to better protect

15 vulnerable persons by their cellmates without

16 segregating them and denying them access to

17 projecting. I think that persons who are vulnerable

18 to attack should be celled together so they have --

19 they are not victimized by larger, more violent and

20 more experienced predators. If an inmate knows that
21 he may be attacked by a particular individual, that
22 person should not be punished for voicing concerns
23 about them.

24 All the injustice I was facing was really
25 starting to add up. I felt isolated and persecuted

1 I reached the point of developing extreme anxiety
2 and was eating my hair to abate the isolation I
3 felt. I felt like I was going insane. Writing
4 became my only vehicle of release, and I kept a
5 274-page journal of all names, dates, times, places
6 and incidents of abuse and retaliation.

7 After the sexual assault examination in
8 January, I had been given a security classification
9 hearing date. At the classification hearing the
10 first sergeant's threats that I would lose my good
11 behavior credits was finally realized. The warden
12 of the Susanville facility was present and told me
13 that my release date of April 27th, 2005, would be
14 delayed. When I confronted her about it, she said
15 that she didn't care if it was punishment or not. I
16 served nine extra months, not because of anything I
17 had done wrong, but because I reported an assault.
18 The official response for the loss of credits was
19 because I was being permanently transferred out of

20 the Trinity River training camp, a minimum security
21 facility, and was no longer eligible for receiving
22 credits for good behavior, and thus the credits I
23 had already accumulated was no longer valid.

24 At the hearing it was concluded that I would be
25 sent to the California Men's Colony in San Luis

1 Obispo. In dorms of CMC general population I was
2 confronted with a whole new set of problems. There
3 are approximately 100 inmates in each dorm, and I
4 was constantly being sexually harassed and pressured
5 for sex. Inmates would follow me into the showers
6 and the bathroom and pull my covers at all hours of
7 the night.

8 Officers are supposed to patrol the dorm at
9 all times, especially during the night, and somehow
10 inmates were able to get up, pull my covers on their
11 way to the bathroom, which was intended for a signal
12 for me to either follow them or face a possible
13 physical assault. On the ward inmates were selling
14 my photo so that everyone would know who the new
15 girl on the block was. I was referred to as the new
16 girl as a derogatory reference to my being gay.

17 I was moved from dorm to dorm five different
18 times as inmates bribed the housing clerk to have me
19 moved into the dorm thinking I would be or would

20 have sex with them. Eventually I was starting to
21 use the situation in my favor. I bribed a clerk to
22 have especially aggressive inmates moved into
23 different dorms and moved away from me. Still the
24 harassment was constant and obvious, but officers
25 seemed to ignore the situation. I couldn't eat or

1 walk in the dining hall without dealing with the
2 derogatory comments and cat calls. I couldn't eat a
3 hot dog, burritos, popsicle because other inmates
4 would make crude comments and holler at me across
5 the hall.

6 Staff would ignore this or laugh along with
7 the inmates. Several other inmates and other -- I
8 once overheard one of the correctional officers say
9 that if he had his way with homosexuals, he would
10 have them in separate dorms so they would get their
11 asses kicked and be forced to roll up and go where
12 their asses belong.

13 I was so exhausted by the daily harassment
14 that I had no choice but enter into a relationship
15 with an inmate in my dorm in order to keep the rest
16 of them off me, in exchange for his protection from
17 other inmates. I had to be with him sexually
18 anytime he demanded it. It was not -- it is was so
19 humiliating that I often cried silently at night in

20 my bed. This person was a drug user, physically
21 abusive towards me and generally unstable. But
22 dealing with one is better than having to deal with
23 ten or more men demanding sex from you at all given
24 times.

25 In my view, facilities need to provide

1 orientation handbooks to gay and transgender inmates
2 that teaches them how to notice the warning signs
3 prior to sexual attack. In dorms we should be
4 placed together so we have a sense of support, so we
5 don't feel completely isolated because predators
6 know that an isolated prisoner is more vulnerable.
7 Healthy and responsible relationships with other
8 inmates and staff should be encouraged so that
9 people feel encouraged to speak out if an issue does
10 not come -- does come up. Resource and information
11 about sexual abuse should be freely offered. County
12 jails should inform CDC when a gay or transgender
13 inmate will be transferred to a receiving prison so
14 they are prepared properly to meet the inmate's
15 needs. Most of all, responsibility for avoiding a
16 sexual assault cannot be laid solely on us, the
17 inmates. Correctional staff must do much more to
18 prevent and response to sexual violence. Staff
19 members who are slow to respond and to report sexual

20 assaults or who abuse or harass inmates on the basis
21 of sexual orientation need to be reprimanded,
22 terminated or prosecuted, depending on the specifics
23 of the situation. In general, their needs to be
24 more focus on the needs of gay and transgender
25 inmates, and correctional officers should undergo

1 some sensitivity training so they do not bring the
2 prejudices to work on the prison facility.

3 I have heard from some of the gay inmates that
4 I met while in prison, and they continue to deal
5 with homophobia from correctional officials and
6 general unwillingness to take common sense steps
7 that will protect them from sexual abuse.

8 Now that I have been released I am working on
9 a civil lawsuit to address some of the difficulties
10 that I incurred while incarcerated. I found that my
11 appearance and sexuality played a major role in some
12 of the violations that I endured and I sincerely
13 hope that by sharing my story with you it will in
14 some way help other gay prisoners.

15 Once again, thank you for allowing me to --
16 sorry about that -- talk with you about my
17 experiences at California Department of Corrections
18 and Rehabilitation.

19 MR. MCFARLAND: Thank you very much, MR.

20 CLINTON. I imagine that was very difficult, and we
21 appreciate your sharing this.

22 Ms. Hall-Martinez.

23 MS. HALL-MARTINEZ: I am honored to
24 address the members of the Department of Justice
25 Review Panel on Prison Rape at its first hearing

1 here in our home state of California. I am
2 Kathy-Hall Martinez, Codirector of Stop Prison Rape.
3 We are a national organization of human rights that
4 seeks to end sexual violence against men, women in
5 any forms of detention. There are three parts to
6 our mission by which we try to achieve this goal.

7 First of all, engendering the quality to
8 ensure government accountability for prison rape,
9 trying to change ill-informed and flippant public
10 attitude towards sexual assault behind bars,
11 something we touched on this morning. And we also
12 try to promote access to resources for survivors of
13 this type of violence.

14 SPR was founded in 1980 by a survivor, and SPR
15 has tried to be an outspoken voice for ending such
16 violence. In 2001, the board of SPR hired its first
17 part-time executive director, and we now employ a
18 professional staff of seven. This month the
19 president of our board, T.J. Parsell, is releasing a

20 memoir called Fish about his experiences as a
21 17-year-old being raped by other prisoners in an
22 adult facility. SPR, as I said, we try to
23 prioritize giving a voice to survivors. We hope
24 this panel and my testimony today will illustrate.

25 When I read T.J. Parsell's memoir recently, I

1 was struck by how similar his sexual assault while
2 incarcerated between 1978 and 1982, his assault
3 experiences were similar to those that we receive in
4 letters today. In fact, somewhat similar to Mr.
5 Clinton's experience as well. We receive about 15
6 letters per week from survivors of prison rape
7 around the country. In some cases the rape just
8 happened or the individual victim is a victim of
9 ongoing rape. In many cases survivors were
10 assaulted weeks or months ago. In a few cases it
11 has taken them several years to confront what
12 happened to them. The information we receive
13 spontaneously from these survivors provides insight
14 to what is happening in our prisons. We are dealing
15 with shortfalls in how corrections systems prevent
16 and respond to sexual assault.

17 Since we began cataloguing letters in 2002,
18 our database now contains information from more than
19 650 survivors of sexual assault in prisoners right

20 across the U.S. As part of our outreach, we provide
21 a resource packet to every survivor who writes to
22 us. Hope for Healing is something that we just have
23 begun providing recently and is meant to assist
24 those who have no or limited access to counseling
25 where incarcerated.

1 I want to run quickly through some of the
2 recurring themes that we hear about in the letters
3 we receive. I won't be able to go through all of
4 them. Just list them quickly. Of course, many of
5 these things are things we talked about earlier
6 today.

7 Improper classification that leaves prisoners
8 vulnerable to attack; staff complicity in or
9 awareness of the sexual violence; impunity for
10 perpetrators, whether staff or prisoners;
11 inappropriate facility environment that leaves
12 prisoners vulnerable; inadequate design; isolated
13 areas; abuses of leering strip searches and
14 discriminatory language used by correction officers;
15 negative consequences of reporting; including
16 placement in punitive segregation.

17 Other barriers to prisoners reporting:
18 inadequate medical and mental health treatment and
19 retaliatory treatment. Finally, also general

20 conditions that contribute to sexual assault, such
21 as overcrowding, understaffing and reinstatement of
22 abusive staff.

23 As I said, I won't be able to go through all
24 of these, but I just want to list them briefly. I
25 now want to zero in on California, the main focus of

1 today's hearing.

2 We are really pleased that the Review Panel
3 has selected California to begin its work. Not just
4 because it is our home base, but we really do
5 believe that the California Department of
6 Corrections and Rehabilitation has been among the
7 more proactive states in working to implement the
8 letter and spirit of the Prison Rape Elimination
9 Act. The fact that we are based here in California
10 has enabled us to propose several pilot projects to
11 CDCR that we eventually hope can be modeled
12 nationwide and help to contribute to the setting of
13 standards, et cetera.

14 CDCR has really embraced the opportunity to
15 collaborate with us, demonstrating a serious
16 commitment to ending prisoner rape within senior
17 levels of the department. I want to just quickly
18 mention -- I want to also mention that I really
19 think that that process began in earnest during

20 Commissioner Hickman's tenure.

21 The information that we heard about this
22 morning from CDCR officials already highlighted some
23 of the things we are aware of that are happening in
24 the state that we think are quite positive. One
25 thing that Nancy Hardy mentioned in her testimony is

1 that recently SPR contracted to provide training to
2 staff and to place placards publicizing SPR and the
3 local rape crisis centers existence in all the CDCR
4 facilities by the end of 2007.

5 In addition, CDCR senior staff recently
6 expressed its intention to us to start a pilot
7 program of full day training by SPR for senior
8 correction staff that focuses on international
9 domestic human rights and other legal standards that
10 underpin the goal of zero tolerance for prisoner
11 rape and that that can soon be underway. We really
12 do believe this is crucial training that ties
13 together many of the concepts and issues that we
14 have been highlighting today. Just relating to the
15 bottom line of ensuring the dignity of all prisoners
16 and ensuring that they are not dehumanized. Because
17 we think that, when that is occurring, sexual
18 violence is more likely to occur.

19 At the same time despite these hopeful signs

20 what we are very excited about, we do still think
21 there is quite a lot that has to happen before these
22 initiatives impact the experience of prisoners
23 themselves, and this is true both in California and
24 throughout the U.S.

25 PREA's letter and spirit hasn't really yet

1 made much of a difference as we can see for the
2 majority, for the vast majority of prisoners. But
3 we do take heart that three years after passage we
4 may just be at the cusp of it starting to make a
5 difference. I think what happens in the next year
6 or two will be pivotal.

7 In the short time I have remaining today I want
8 to share some of SPR's experience and insights from
9 our interaction with California and other states to
10 illustrate two recurring themes we hear about quite
11 a lot.

12 Prisoners' legitimate fears of reporting due
13 to punishing procedures and retaliation; and number
14 two and relatedly, many correction officials and
15 system's assumption, if not formal presumption, that
16 prisoners are lying when reporting a sexual assault.

17 With respect to the first issue. Many inmates
18 do not report prisoner rape for a good reason, as we
19 have heard about. A serious problem in California

20 and elsewhere is that the official and unofficial
21 responses to sexual response tend to penalize
22 victims. A few continuing practices, if not
23 procedures, tend to exacerbate the negative impacts
24 on survivors and as yet have to be seriously
25 addressed.

1 First, we do think lack of confidentiality is
2 a serious problem. CDCR policy requires all
3 facility staff, including mental health staff, to
4 immediately report to a corrections administrator
5 when anyone reports a crime, including sexual
6 assault. This tends to leak to other prisoners and
7 staff, in addition to California Correctional Peace
8 Officers Association members being informed
9 immediately of allegations against them.

10 Transparency in this context is, we think, dangerous
11 and counterproductive. Many prisoners tell us this
12 is a primary reason they do not report. Basically,
13 everyone will know, which will endanger them
14 significantly and cause them to be labeled as
15 snitches.

16 Second, the still merely reflective procedure
17 of putting the victim in isolated protective custody
18 or administrative segregation. This is an
19 appropriate reaction for an alleged assailant until

20 it is shown that he or she was not responsible. But
21 treating victims equivalently, we think, is
22 inappropriate. Corrections officials' response is
23 to critique about this policy is that if an inmate
24 really fears for his or her life and/or being raped
25 again, they will not question being put in 23- or

1 24-hour lockdown indefinitely, without access to
2 programming and losing good behavior points, et
3 cetera.

4 Officials try to address institutional
5 concerns about exposure of an inmate to subsequent
6 assault. Although we think it is quite surprising
7 how many times individuals are actually assaulted
8 again even after they have been put in
9 administrative segregation. So officials seem to
10 discount how traumatizing this approach is. In many
11 cases reporting may mean losing permanently whatever
12 it is that has made the prisoner's lifer bearable.
13 A job, a friend, recreation time, et cetera. In
14 essence, whether it may not be intended this way,
15 prisoners view this policy as a form of punishment
16 for reporting in the first place and will do almost
17 anything to avoid the excruciating isolation of
18 administrative segregation.

19 I should mention here that automatic

20 assignment of victims to protective custody is not
21 CDCR policy, as we heard, but we are concerned that
22 such assignments may still be nearly automatic in
23 practice.

24 Third, we have observed that at least in some
25 CDCR facilities in other states as well the person

1 reporting a sexual assault is cited for a
2 disciplinary infraction. This procedure simply
3 defies logic. We don't understand how this can
4 happen to an inmate who reports a crime in which his
5 or her lack of legal consent is at the very heart of
6 what he or she is reporting. Unless and until it is
7 determined that consensual sexual contact occurs,
8 which is contrary to CDCR and most states' policies,
9 the victim should not be cited.

10 Fourth, as in the outside world many years
11 ago, corrections officials tend to blame the victim,
12 and in far too many instances various forms of
13 retaliation occur. These include everything from
14 being verbally harassed by other prisoners and
15 staff, to losing recreational privilege, to being
16 raped again by the same or other prisoners or even
17 killed.

18 The final point I wanted to make about
19 reporting is an important one. On the one hand CDCR

20 and other state policies on prisoner rape still tend
21 to focus on reporting as the primary prevention
22 strategy. Correction officials mandate reporting,
23 fearing liability and security breaches, but do
24 little to address the culture that resulted in the
25 assault in the first place, and they often do not

1 respond appropriately to the reports that do occur.

2 Reporting rates, both in the prison and in the
3 community, remain so low that a focus on increasing
4 reports, while important, will not eliminate sexual
5 violence in prison. The nature of sexual assault
6 and the resulting rape trauma syndrome, which is a
7 form of posttraumatic stress disorder, tend to cause
8 people not to report in any event. Unfortunately,
9 CDCR and other states' policies and practices simply
10 lengthen the list of reasons prisoners have in their
11 own minds for not reporting in the first place.

12 The second major issue we see far too often
13 both in our conversations with corrections officials
14 around the country and in letters we receive is that
15 prisoners who do report are presumed to be lying.
16 We want to make the point to the Review Panel that
17 in our experience prisoners seldom lie about being
18 sexually assaulted. Those who report are labeled as
19 snitches and are ostracized. They are at risk for

20 further assault and harassment. They are often
21 segregated and denied privileges, and they have to
22 suffer as all rape victims do the indignities of the
23 investigation and the stigma of being a rape victim.

24 We are told about manipulations of the
25 goodwill of correctional personnel by prisoners who

1 want something: a transfer, to get even with a
2 rival, et cetera. While this certainly may occur in
3 a very small number of cases, the risk of falsely
4 reporting, in addition to what I mentioned above,
5 include being penalized with loss of good time and
6 other privileges.

7 Again, in our experience most prisoners will
8 not take those risks. Too many corrections
9 officials assume that unsubstantiated cases, meaning
10 there is insufficient evidence to confirm or reject
11 a claim, are equivalent to false reports.

12 Unfortunately, investigations that result in
13 unfounded or even unsubstantiated conclusions seem
14 to be deemed acceptable and at least seem contribute
15 to the belief that prisoners lie about rape when
16 these incidents could be reviewed and used to hone
17 investigator strategies. This is a reality that has
18 to be confronted.

19 I want to make two very short other points

20 today. First, all correction systems need to take
21 on a prison culture that tends to target lesbian,
22 gay, bisexual and transgender people or those who
23 are perceived to be any of the above for sexual
24 violence. While any person can be sexually
25 assaulted in a corrections facility, and we

1 certainly receive letters from victims of both LGBT
2 and non LGBT, this issue seems to be a particular
3 Achilles heel in quite a few states, including
4 California. Much more needs to be learned about the
5 incidents and the characteristics of prisoner rape
6 in California as elsewhere.

7 The letters we receive clearly indicate this
8 is a problem. And one of the attachments I have
9 provided to the Review Panel shows some of these
10 examples. Letters from gay men and transgender
11 women state corrections officials respond to the
12 report by accusing them of lying or exaggerating,
13 saying things to them like it must merely have been
14 a lovers' quarrel or that the prisoner,
15 quote-unquote, wanted it. So as is the case on the
16 outside, this is extraordinarily damaging for the
17 victim and deters other people from reporting.

18 My final point that I want to make is that we
19 at SPR want to acknowledge sincerely how challenging

20 the work of all correctional personnel is, and we
21 greatly appreciate the hard work of most CDCR
22 employees from staff administrators to line staff to
23 medical staff. In addition sexual violence in CDCR
24 facilities, indeed, even in the corrections system,
25 that have as yet to implement PREA, we recognize

1 many corrections do their best to confront prisoner
2 rape in their jobs day in and day out. We recognize
3 a range of issues challenging us not to make light
4 of the goal of substantially reducing or eliminating
5 prisoner rape from correctional facilities, from
6 overcrowding and inadequate staffing to a culture
7 outside of prison that provides justification for
8 the assault that occurs inside. The list of
9 challenges is long.

10 And as I said, we do take on public attitude
11 as part of our mission, that may be indeed the
12 toughest part. We are committed to collaborating
13 with correction staff in California and nationwide.
14 At the same time we will continue to aggressively
15 advocate for better prevention and response
16 initiative.

17 Our senior staff has extensive experience in
18 human rights advocacy in many contexts, which is why
19 we are really thrilled that the Review Panel will

20 eventually, as required by PREA itself, exercise and
21 mandate the uses in changing and praising strategy
22 based on forthcoming government data on incidence of
23 sexual assault. Unfortunately, as the voices of
24 survivors tell us, the existence of moral and legal
25 standards to combat prisoner rape is not enough.

1 The standards are there. We all know that all
2 people have a right to be free from sexual violence,
3 including those who are incarcerated and completely
4 under state control. Changing correction officials'
5 attitude and public attitude is crucial and
6 rewarding systems that show progress and punishing
7 those that do not truly will help. We stand ready
8 to provide whatever expertise we can to the Review
9 Panel that might be useful. And I really want to
10 thank the three of you for the time that you have
11 taken to be here and to everyone attending today's
12 hearing. There are a lot of important stakeholders
13 in the room and I welcome any questions or comments
14 on my testimony.

15 Thank you very much.

16 MR. MCFARLAND: Thank you very much.

17 Questions?

18 MR. SEXTON: I do. I have a question for
19 you MR. CLINTON. As I was listening to your

20 testimony, I went through Title 15, which I
21 understand every inmate gets that comes into the
22 California system; is that correct?

23 MR. CLINTON: It is called Our Bible.

24 MR. SEXTON: As I went through, I looked
25 at the appeal, at the grievance. I looked at

1 inspection of legal mail, which you were saying you
2 didn't want them to do, but which they have every
3 right to do. I am reading about legal forms. I am
4 reading about confidential materials, and I am
5 reading about appeals of disciplinary actions. This
6 is just in the few minutes that I had to go through
7 it.

8 My question is: Understanding that you're a
9 victim of a crime, was your crime investigated and
10 moved forward in a criminal action?

11 MR. CLINTON: Just to clarify. You say
12 they have every right to go through confidential
13 mail. Before we go forward, they have a right to
14 look at it and review in your presence, but they are
15 not allowed to open it or review it out of your
16 presence. They are able to go like this. They say
17 this is legal mail, here you go. When they open it
18 out of your presence, there is a tendency to read
19 it. There is a big difference understanding. Maybe

20 that wasn't clarified in here. You guys need to

21 understand that. It was being opened --

22 MR. SEXTON: I only had 30 minutes.

23 MR. CLINTON: I want to make sure we are

24 on same page, that that is what happened. When you

25 review it, like if I take a document, a legal

1 document --

2 MR. SEXTON: Just out of curiosity. It
3 says to determine the possible presence of
4 contraband all incoming confidential mail will be
5 inspected prior to delivering to an inmate.

6 MR. CLINTON: It has to be opened in the
7 presence of an inmate. What page are you on?

8 MR. SEXTON: I am on Page 64. My question
9 is this: Did you have the opportunity to pursue a
10 criminal case? Had you -- if a criminal case was
11 not pursued, then it is difficult to get some of the
12 sides of the story, and I have been a cop for 30
13 years, so we deal unfortunately with rapes. But
14 where we are talking about a situation of
15 confidentiality, in my state you are going to get to
16 a point no matter what you do that this is going to
17 be become a public -- it's going to -- it will come
18 up in a public hearing, a trial. Or my other
19 question that goes to this as I go through this, and

20 I think you answered it, why didn't you take any
21 legal action? Was a call to a third party that was
22 outside, contact to a parent, any contact to a
23 friend by phone? Was there any kind of
24 communication saying that I got a problem in here, I
25 need to speak to an attorney, I need to speak to the

1 warden, I need to speak to somebody about my
2 problem, those types of things? I have not heard.
3 I am curious why they weren't pursued.

4 MR. CLINTON: Are you talking about the
5 criminal action against the aggressor?

6 MR. SEXTON: Yes, sir.

7 MR. CLINTON: They do that. I don't have
8 any control over that.

9 MR. SEXTON: You don't have the
10 opportunity to sign a warrant?

11 MR. CLINTON: I didn't know that. We are
12 put in segregation. You have nothing. I mean
13 nothing. I had half a blanket and a mat about that
14 thick.

15 MR. SEXTON: I thought you said that you
16 came back out in general population, tried to get
17 your room moved to the back of the building closer
18 to --

19 MR. CLINTON: That was when -- I got out

20 on December 3rd. I went back on December 6. That

21 is a weekend. There is no way to do anything.

22 MR. SEXTON: What kind of phone access do

23 you have?

24 MR. CLINTON: We didn't have any phone

25 access. You have to sign up for phones usually a

1 week prior. They are in cages in the general
2 population. They are not in the gym.

3 MR. SEXTON: You had no phone contact, you
4 had no way to get a message --

5 MR. CLINTON: No, not until later on.
6 Once I got my 115 for the 30 extra days, I had an
7 interview on the hearing with a lieutenant, the
8 lieutenant that heard it, and he found my property
9 within ten minutes. Then I had stamps. Then I had
10 envelopes. I could start writing.

11 MR. SEXTON: How about --

12 MR. MCFARLAND: 115 is a disciplinary?

13 MR. CLINTON: Disciplinary infraction.

14 MR. SEXTON: How about the possibility of
15 filing out the federal forms, that could be filed
16 against the state for what had taken place to you at
17 that time? Was that ever pursued or thought of?

18 MR. CLINTON: Everything I learned on
19 legal stuff I learned actually beginning about in

20 segregation. We don't have access to the law

21 library.

22 MR. SEXTON: The Bible.

23 MR. CLINTON: I wasn't given one of these.

24 When you are put in segregation, you are supposed to

25 get one of these. It actually says that, 3002, when

1 you are in segregation. I wasn't given this. I
2 wasn't given a 602 form.

3 MR. MCFARLAND: What is 602?

4 MR. CLINTON: An appeal form, a grievance
5 form. I wasn't given anything. Later on, once I
6 was able to acquire it, I was able to start
7 acquiring it from a psych tech that was under
8 investigation for being, quote, too friendly with
9 inmates. Given information that he was able to get
10 me a form. He had to go to another facility. They
11 don't want you to have a form. If you don't have a
12 form you can't bring it into the courts. You have
13 to exhaust the administrative remedies.

14 I contacted Lassen County Superior Court, and
15 they said they couldn't do anything until you've
16 exhausted your administrative remedies. I wrote a
17 handwritten letter once I was able to get stamps and
18 everything else. All that was in my property.
19 Until I get my property, I have nothing. I have no

20 legal books, no Title 15, nothing.

21 MR. MCFARLAND: Was your assailant ever
22 prosecuted?

23 MR. CLINTON: No. They put him back in
24 the general population. They let him go in general
25 population. As far as I know, nothing happened.

1 MR. MCFARLAND: Do you know if it is
2 standard procedure in CDCR for them to provide the
3 incident report to both alleged predator and victim?

4 MR. CLINTON: No. What they did with
5 that, if I understand you correctly, the
6 confidential memorandum, they are not allowed to do
7 that in here. What it was --

8 MR. MCFARLAND: In here? For the record.

9 MR. CLINTON: In Title 15.

10 MR. MCFARLAND: Referring to the Bible?

11 MR. CLINTON: To the Bible. So basically
12 they are not allowed to release that document. That
13 document is under confidential disclosure form.
14 What someone had done, and I don't know how they did
15 it. No one will give me any answers. I know my
16 situation popped a big sting at that institution.
17 And someone, I guess, had went in and copied the
18 confidential or removed it and copied it, and then
19 gave me a copy, which I got to read kind of out of

20 sequence. I was -- I was, like, I don't think I was
21 supposed to have this. I am reading this is really
22 good. This is telling me about the other good. Oh,
23 my God.

24 And he goes, "He has a history of problems.

25 Blah, blah, blah."

1 I used to be a clerk, a disciplinary clerk

2 there. They entrusted me.

3 When I came back down there, "What is wrong?

4 Oh, my God. The sergeant didn't tell me anything.

5 I need to put you in protective custody now."

6 I said, "Okay. I don't know what to do.

7 Okay." Then they find out that confidential

8 memorandum wasn't even supposed to be released.

9 Someone went into the file, and basically in the

10 prison system because you tour it but you don't see

11 it, how it actually works. There is what they call

12 fag haters. They don't like us. And there is a

13 prison word which is vulgar. I really won't say it.

14 MR. MCFARLAND: Go ahead.

15 MR. CLINTON: Cocksuckers. That is what

16 we are called. We are treated just as filthy as we

17 are called.

18 MR. SEXTON: You reference a sergeant, an

19 investigator. Was any personnel action ever taken

20 against these individuals in your statement did not

21 follow policy or treated you incorrectly?

22 MR. CLINTON: When I was going down from

23 Trinity River, the two officers that had me in the

24 van, I have to say they were really nice. And one

25 was female. She was the only female at the camp.

1 Me and her really bonded, as far as I can talk to
2 her like a sister or a mom. If I had a problem, she
3 was really nice. She was almost crying when I was
4 crying, and you could tell it really bothered her.
5 The sergeants, I don't know what is going in that
6 end. I know whenever I approached asking questions
7 I am not allowed an answer because I am an inmate.
8 There is a thing called a citizen complaint or when
9 you do address a staff misconduct, which lets you
10 know most of the time they find the staff innocent
11 of the misconduct. But they don't tell you the
12 outcome of that. They'll tell a citizen, but they
13 won't tell you about the officer, if they found the
14 officer who did it. They won't tell you anything
15 because that is a liability for them. Bottom line,
16 it's a liability to tell me that, "Yeah, we found
17 out who the officer was that did this and his name
18 is Old Buck." Well, yeah, I'm going to name him as
19 a defendant. Anyone knows that. They are not going

20 to give you that information.

21 MR. SEXTON: Nothing happens?

22 MR. CLINTON: As far as I know.

23 MR. SEXTON: I don't know what the law is.

24 I am from Alabama. Would you give us permission, if

25 the law allows us to review your inmate file, to

1 review this?

2 MR. CLINTON: Yeah. I think you'll find
3 it real interesting because my confidential -- I
4 have reviewed more than a paparazzi does of a
5 celebrity. I have more signatures on my
6 confidentials than anyone else. I have other
7 people's folder to see. People have been in and out
8 of there, reading confidentials, writing
9 confidentials on me. Building a case against the
10 person, but I can tell you right now, anything that
11 I have said in here I can prove with documents. I
12 can prove. I can show you things. There can show
13 you little tricks that I haven't told them because
14 they'll use it against me.

15 MR. SEXTON: Can you provide it to this
16 panel?

17 MR. CLINTON: Yeah, to the panel, not
18 CDC.

19 MR. SEXTON: Panel.

20 MR. CLINTON: I will sit down with you and
21 go through it and say, "Look at this. Look at this
22 compared to this." I can prove the warden lied in
23 her appeal response on my time.

24 MR. SEXTON: You're filing a civil action?

25 MR. CLINTON: Yeah. I think it is

1 important that people like me have some sort of
2 dignity and some sort of rights, and they are not
3 given that in prison. This is a good example. You
4 have the yellow booklet, turn to 3004, the Section
5 3004.

6 MR. SEXTON: What page?

7 MR. CLINTON: On Page 15.

8 MR. SEXTON: Sorry.

9 MR. CLINTON: Page 15. I have the new
10 one. I just wanted to check to make sure before I
11 shot myself in the foot.

12 MR. SEXTON: I'm looking at 2004 which was
13 the year you were in.

14 MR. CLINTON: Page 15, 3004, Page 15.
15 Section 3004, rights and respects of others. Says
16 inmates and parolees and employees will not subject
17 other persons to any form of discrimination based on
18 race, religion, nationality, sex, political belief,
19 age, physical or mental handicap. Gay, lesbian,

20 bisexual, transgender is not even covered. That
21 means to the inmate that we have no rights, no
22 respect, no dignity. We have nothing coming.
23 Nothing. 'Cause we are not covered in there.

24 MR. MCFARLAND: You are covered in
25 3004(a), aren't you, as an inmate and parolee, you

1 have the right to be treated respectfully and --

2 MR. CLINTON: They don't see us an inmate.

3 We are seen as what I told you.

4 MR. SEXTON: I believe you were remanded

5 to custody of CDC by a judge; is that correct?

6 MR. CLINTON: Yes.

7 MR. SEXTON: You became an inmate at that

8 time.

9 MR. CLINTON: That is not the way inmates

10 see it.

11 MR. SEXTON: I am going by what the law

12 says.

13 MR. CLINTON: Inmates don't follow the

14 law. We wouldn't be in prison if we did.

15 MR. SEXTON: I understand what you are

16 saying.

17 MR. MCFARLAND: May I ask a question, Ms.

18 Hall-Martinez? You suggest on Page 3 of your

19 testimony that there is some -- you cite some

20 positive developments in the last year. Item D,
21 CDCR began collaborating with SPR to provide
22 community rape crisis center counselors with access
23 to corrections facilities to provide weekly
24 confidential counseling.

25 You were here when I was asking questions, we

1 were asking questions about apparent conflict
2 between expectations of CDCR employees, including
3 mental health counselors, immediate response versus
4 privileged relationship between that counselor
5 relationship. Is this the answer to that conflict?

6 MS. HALL-MARTINEZ: This is an answer at
7 least. We think that this has potential to be
8 reputable in other jurisdictions because there are
9 rape crisis center facilities with trained staff
10 throughout the county really. And as I am sure the
11 panelists know, that is just a resource that is out
12 there. And frankly, there are facility staff,
13 facility mental health staff, that don't necessarily
14 have any training in dealing with sexual assault
15 victims. They are dealing with other mental health
16 issues, and they may have some, but this is a way,
17 in fact, that inmates can be provided with
18 counseling and have access to an outside person who
19 is not subject to the requirements to report that a

20 crime has occurred.

21 MR. MCFARLAND: Would that be
22 prohibitively expensive or do the rape counselor
23 ordinarily charge for their services?

24 MS. HALL-MARTINEZ: It varies. In some
25 cases we have been able to team up with them and

1 they have been able to provide this at a very low
2 cost. Sort of providing reimbursing mileage costs
3 for the staff to get to the facility and that kind
4 of thing. In some instances rape crisis centers are
5 actually limited where their funding comes through
6 the VOCA law, the violence -- the victims of crime.
7 If they only get their funding from that source,
8 they tend not to be able to do what we are asking
9 for. If it is larger, oftentimes urban rape crisis
10 centers, they have more diversified funding. They
11 are able to do this by drawing on those other
12 sources. That is kind of a problematic situation,
13 we think, where the federal law having an unintended
14 consequence because the purpose of what is, in the
15 federal law, as I understand, maybe Ms. Ellis can
16 educate me on this, what I understand is that they
17 can't do that. They can't provide counseling to a
18 person who has committed a crime.

19 MS. ELLIS: Violence against women, the

20 funding for stopping violence against women.

21 MR. SEXTON: Are you talking about funds
22 for violence against women?

23 MS. HALL-MARTINEZ: There is also VOCA Act
24 as well. I don't believe that is just people that
25 have been involved in violent crimes against women.

1 Oh, I see what you mean.

2 MR. SEXTON: Violence.

3 MS. HALL-MARTINEZ: That provides that
4 they have to be -- they can't provide counseling to
5 anyone who has committed a crime. So we have been
6 able to sort of be creative on how we structure
7 this. And again, we are hopeful that this could be
8 reputable in other contexts.

9 MR. MCFARLAND: How do you think the union
10 would respond to canning their mental health
11 counselors in favor of using outside rape
12 counselors?

13 MS. HALL-MARTINEZ: Well, I would imagine
14 they would respond well. I think that the mental
15 health staff at the facilities are already very
16 stretched, and that this isn't a huge amount of time
17 or are resources that we are talking about. You can
18 see just from the sentence in my testimony it is a
19 weekly, one- to two-hour slot of time.

20 MR. MCFARLAND: How would that help MR.
21 CLINTON who gets raped, goes to the sergeant or the
22 officer, the officer says, "Don't tell me anything
23 more, wait until tomorrow morning." What if
24 tomorrow morning isn't the one or two hours that the
25 rape counselor is there?

1 MS. HALL-MARTINEZ: It doesn't help him.
2 It is really meant as a backstop for prisoners that
3 need mental health counseling, counseling to deal
4 with trauma, and in many cases they may have decided
5 that they don't want to report.

6 MR. MCFARLAND: It won't address
7 confidentiality issues unless we had full-time
8 outside counselors.

9 MS. HALL-MARTINEZ: That's correct.

10 MR. MCFARLAND: My problem is that it
11 would [inaudible] federal statutes and might not be
12 appreciated.

13 MS. HALL-MARTINEZ: That's exactly right.
14 What we have is sort of a small stopgap, to provide
15 a service that we think is needed because of many
16 inmates' concern that they really don't trust the
17 facility staff. Frankly, they aren't in a place
18 where they want to come forward. They are
19 definitely in need of some trauma counseling.

20 MR. SEXTON: We have decentralization
21 nationwide of mental health services.
22 Unfortunately, if we go to community-based, we are
23 seeing more get arrested and in county jails and
24 placed in the prison system which has escalated.
25 Basically has replaced the centralized mental health

1 system and is now the prison system again.

2 How are prison administrators supposed to
3 balance out the need? I will give you an example.
4 My jail is about 600 beds, but almost 300 beds -- I
5 am the largest mental health provider in my county.
6 How do I address your concern?

7 MS. HALL-MARTINEZ: I am not following.

8 MR. SEXTON: How do I address to try to
9 provide this outside counseling for rape or sexual
10 assault that may not have occurred during that time
11 and balance out against the overwhelming mental
12 health burden that I've accepted?

13 MS. HALL-MARTINEZ: It seems like there
14 could be, for example, inmates might have access to
15 an 800 number to reach the rape crisis center
16 counselor that way. That would be a low cost way to
17 provide at least a minimal amount of counseling when
18 the person is in some kind of position of need.
19 That is one suggestion.

20 MR. MCFARLAND: Has that ever been

21 suggested to CDC or considered?

22 MS. HALL-MARTINEZ: Actually, the other

23 program that I mentioned that we're working on with

24 SPR talks about placing placards in CDCR facilities

25 that will have both sort of contact information for

1 local rape crisis centers, publicizing their
2 existence and how to reach them and also SPR and how
3 to reach us.

4 And again, this isn't a panacea. It is not
5 sort of a perfect solution by any stretch. It is a
6 way to try to provide, perhaps, assistance to some
7 inmates and even to provide a mechanism for,
8 perhaps, a family member or friend to contact or a
9 rape crisis center, to get them help. If they have
10 the opportunity to use a phone, they may be able to
11 contact a rape crisis center. They could certainly
12 write to SPR. Many inmates write to local rape
13 crisis centers as well. We tried to provide -- we
14 actually have a resource guide state by state. We
15 list rape crisis centers that have indicated the
16 willingness to hear from prisoners.

17 MR. MCFARLAND: MR. CLINTON wanted to say
18 something. And I wonder if you would also address
19 the question how comfortable you would have felt in

20 your situation making that phone call, assume it

21 would be monitored writing that letter.

22 MR. CLINTON: I wouldn't be able to make a

23 phone call in segregation. That's not possible.

24 You don't have phone calls. You don't have

25 nothing.

1 MR. MCFARLAND: Before you went to seg you
2 tried to report the incident and the guy said just
3 to go sleep tonight, wait until tomorrow.

4 MR. CLINTON: I think we talked about
5 that. I think it was that -- we talked about that
6 idea. I said that the biggest problem is the phones
7 are monitored. And the way to work around that is
8 that if policy would be set to where they say you
9 are assigned a caseworker or a correctional
10 counselor, someone who makes sure your central file
11 is correct, he knows about you. If they have any
12 questions, they call him. They each have a little
13 office with a glass window. There is nothing
14 stopping them for letting us dial that number. It
15 has a desk. They can watch us, make sure we don't
16 touch anything. There are people in there that are
17 going to take a chance, take a pen or you are always
18 going to run across those criminal mentalities.

19 I am not saying I shouldn't have done my time,

20 but how I do my time is a question. How I am

21 treated.

22 MR. MCFARLAND: You are suggesting that an

23 800 number be available to that rape counselor, and

24 you make that call from the caseworker's office.

25 MR. CLINTON: Yeah. I go, "Counselor

1 McFarland, I need to make a phone call to the Office
2 of the Inspector General or to the number." He
3 can't ask you any questions.

4 MR. MCFARLAND: Are you comfortable with
5 that, have you just broadcast to the whole unit?

6 MR. CLINTON: They are going to call you
7 in there. Here is the problem with the whole
8 situation. When we are contained like that, they
9 all talk behind your back. It is called bantering.
10 They all release confidential information. I know
11 information about who was fired as assistant
12 medical.

13 MR. MCFARLAND: Because?

14 MR. CLINTON: Because they were child
15 molesters. They release that information. These
16 people who have access to confidential information
17 like correctional officers that have no time in the
18 system, that are not professional sergeants that
19 have 15, 20 years, that have a strong mind and a

20 strong will and respect in their way, they're
21 corrupt, have just the same amount of access. As
22 with my situation, apparently they are not monitored
23 very closely because they were able to release a
24 document I am not supposed to have.

25 MR. MCFARLAND: What are you suggesting as

1 the answer? What should CDCR do to protect your
2 confidentiality and your safety and get you to some
3 confidential counseling?

4 MR. CLINTON: I think the biggest thing --
5 you can call -- one of the things they said was a
6 good idea. If they work with a system in the local
7 county, even though in Trinity River there isn't a
8 rape crisis center because it is, like, up there. I
9 have pet raccoons. That is how to tell you where I
10 am at. Moe, Curly and Larry were their names. I am
11 up in the sticks. You are not going to have it
12 there. They transport you to Susanville, which is
13 California Correctional Center. That is a larger
14 county. That is Lassen County. There is going to
15 be a rape crisis center there.

16 One of the things that I faced as an
17 individual is they tried to talk to me through a
18 cell door. Cells are like duplexes; they are.

19 MR. MCFARLAND: Ad seg?

20 MR. CLINTON: Yes. So anything I say, if

21 I sneeze and three doors down hears me.

22 MR. MCFARLAND: I am trying to focus on

23 you getting an initial phone call to somebody who

24 does not have a duty to immediately squeal on you.

25 MR. CLINTON: It is not going to happen if

1 you are in administration segregation.

2 MR. MCFARLAND: Before ad seg.

3 MR. CLINTON: Before ad seg I don't see if
4 the guy, the officer in charge, is not willing to
5 hear me. I don't see it happening because there is
6 no way to access the phone. This is security. You
7 have to get permission to access the phone. You
8 sign up for phone. If I am understanding you right,
9 there is no way to get that phone call out. You can
10 write, but if you don't have any Yellow Pages, and
11 the only Yellow Pages is up to the office, really
12 difficult to do.

13 I think the biggest thing if you are talking
14 about areas like that is knowledge and education.
15 For instance, there is nothing stopping each prison
16 from carrying the information on websites. There
17 are no websites. They can print them out, create
18 what they call a general order and put them out
19 there everywhere, saturate the area.

20 Everyone has knowledge. Knowledge is power.
21 Knowledge is education. Predators are going to use
22 that to their advantage. But if the victim or
23 potential victim knows the knowledge prior to going
24 into the situation, they are more apt to know what
25 to do and how to handle it. I wasn't even informed.

1 I am the one that appealed the sexual misconduct
2 booklet that is outdated for CDCR because the
3 address in the back are returned to sender. Six
4 years old. So you have to look at it in a way that
5 it is a big system. It is like been going on for
6 almost 126 years. Now all of a sudden they want to
7 deal with it.

8 MR. SEXTON: Mr. Clinton, what were you
9 charged with?

10 MR. CLINTON: Drugs, possession for sale.

11 MS. ELLIS: You are underway.

12 MR. SEXTON: Go ahead.

13 MS. ELLIS: Thank you for sharing your
14 story. The courage that it must take to be able to
15 sit here and do that. I heard you say something
16 about perhaps having the opportunity to select your
17 roommate, your cellmate?

18 MR. CLINTON: Yeah

19 MS. ELLIS: Would you explain that to me

20 again? I want to make sure I heard that correctly
21 in terms of what is allowed and what is not allowed
22 and what opportunities you have along those lines.

23 MR. CLINTON: There is two different times
24 -- administrative segregation, their point is to try
25 to house you with a person of likeness. And that is

1 to cutback on the cost. Having one person in the
2 cell cost them way too much money, to have one
3 person in a cell. So the officer set me up with
4 someone to meet. You go out. You get handcuffed.
5 You go out to a little cage. You get to talk to
6 this guy while the officer's running around and
7 doing the things they do. And they sit you there
8 and you talk. And you kind of see if you have a
9 feeling on this person I am talking to. He wants to
10 find out why I am there. Well, I just had a
11 confrontation, I was raped by a black guy. That
12 causes major problems especially with me being
13 white. It would just -- he kind of let around he
14 was scoping me out, looking at me. I am going to be
15 locked in a cell with nobody around. I am going to
16 get myself some.

17 He started asking questions. "Are you
18 homosexual? Are you active in prison? Do you have
19 sex?"

20 And I'm like, I think I need time to think
21 about this. The officer comes by. "What do you
22 think?"

23 I think I need to sit on it, just think about
24 it. Get away from him. I go to my cell. No.

25 He goes, "Why not?"

1 "My gut tells me it is bad. You know why I am
2 here; this is not going to mix."

3 So he goes, "I can give you a 115 disciplinary
4 infraction for it."

5 "You do what you have to, but I am going to
6 protect myself overall."

7 He went ahead. And I interviewed another man
8 that was 57 years old and I said, "This guy will
9 work out. He is older." We work better with older
10 people.

11 MR. MCFARLAND: Who is us?

12 MR. CLINTON: Us, gays, lesbians,
13 bisexual, GLBTs is what we call ourselves. We work
14 better around older people. Because they are more
15 seasoned. They are out there to prove themselves,
16 nothing like that.

17 So I said, "I think this guy will work." And
18 he worked out really well. I took him as my cell
19 mate. Well, then after that I get disciplinary

20 infraction and the same thing, the assignment.

21 "Well, what did I do?"

22 "And you refused to take cellee."

23 "I have a cellee. What are you talking

24 about?" Because I refused my first cellee.

25 I later got the documentation that was there

1 administrative segregation rules and that was a
2 memorandum, I think, from 1999, something like that.
3 And I found that sexual orientation is not covered
4 in that. So really there is nothing saying that you
5 are particularly vulnerable. I have taken it that
6 is what it was. From an officer's point of view he
7 doesn't have to think that because it doesn't say
8 the specific word. Common sense is not being used.
9 You can't place any policy or law in effect that
10 give a person common sense. It's something you
11 have or you don't.

12 MR. MCFARLAND: You suspected that this
13 individual would be interested in criminal behavior,
14 right?

15 MR. CLINTON: I think that he would
16 pressure me for sex.

17 MR. MCFARLAND: Wouldn't that be a grounds
18 for denying a celled?

19 MR. CLINTON: That is what I told this

20 guy, it's not going to work. You know why I am
21 here. I can't say it because this guys wants me to.
22 You know why I am here, apparently you have an
23 investigation going on that your cops or officers
24 released memorandum.

25 MS. ELLIS: How long were you there?

1 MR. CLINTON: I was there from November.
2 I was out for just like two days and they put me
3 back in when they realized what they had done. And
4 I was there until March.

5 MS. ELLIS: The entire length of your
6 stay, your incarceration, was how long?

7 MR. CLINTON: My entire length was -- I
8 began my incarceration in October of 2003 and I was
9 recently released on another matter. I was supposed
10 to serve time until January 12, 2007. So --

11 MR. MCFARLAND: Does that include the nine
12 months that you lost in good time?

13 MR. CLINTON: It becomes very complex.

14 MR. MCFARLAND: I don't want to hear it.
15 Don't go there.

16 MR. CLINTON: They are trying to figure
17 out how to cut this back.

18 MR. SEXTON: I have a question. You were
19 sitting back here this morning. You were taking

20 notes. Did the State of California just lie to us?

21 MR. CLINTON: Lie to you?

22 MR. SEXTON: Did they lie to us what they

23 are doing in regard to the PREA, the way that inmate

24 situations are handled?

25 MR. CLINTON: I think that the -- I think

1 the administration have really good intentions. I
2 get a good feeling. There is a missing link between
3 it going down to where it needs to go. For
4 instance, there was a new, what we call hynas; that
5 is male, a Hispanic gay male that came on the yard.
6 Well, they said they can move him into my dorm so
7 she will be safe. And I made the comment we need to
8 keep people away because they are going to try to
9 assault him or her. We prefer -- is called a she.
10 And they said, this is their comment. "Maybe a rape
11 will do them good. That is what you deserve when
12 you choose to be homosexual."

13 MR. SEXTON: Who said that?

14 MR. CLINTON: One of the correctional
15 officers.

16 MR. MCFARLAND: Do you know whose name it
17 was? They wear name tags.

18 MR. CLINTON: Yes.

19 MR. SEXTON: Some of these things that you

20 are making allegations of -- my question would be as
21 I read this, there seems to be ample reporting, but
22 there seems to be inmates are allowed to go --
23 everywhere I've gone in this detention -- every
24 correctional officer I have seen in this facility
25 has a name tag.

1 MR. CLINTON: I can tell you the name.

2 MR. SEXTON: Have you reported this?

3 MR. CLINTON: No.

4 MR. SEXTON: Why not?

5 MR. CLINTON: Afraid of retaliation. I
6 was already given nine extra months.

7 MR. SEXTON: Did you report this after you
8 left the prison system?

9 MR. CLINTON: No.

10 MR. SEXTON: Why not? Do inmates not have
11 a responsibility in this process? As I read through
12 this, it seems that inmates have a responsibility in
13 part of this process to make sure that the facility
14 is safe. I see where they have some --

15 MR. CLINTON: Because the other inmate is
16 there. Basically he would be asking to be attacked
17 or discriminated against or be harassed. It sounds
18 really good on paper. That if I file a citizen's
19 complaint, which I can within one year, on the

20 officer it would do some good. But I can tell they
21 always find him innocent. I've never seen anyone
22 file a citizen's --

23 MR. SEXTON: There's never been
24 substantiated?

25 MR. CLINTON: In my three years I've never

1 seen a file with a citizen's complaint where it was
2 substantiated and they actually prosecuted or
3 charged the other officer, in my three years being
4 there. I could be the only person in the world, but
5 that is what I have seen. You are better off to
6 deal with until you figure out what is going on.

7 MR. SEXTON: It's been my experience as a
8 commissioner of ACA, commissioner on accreditation,
9 that roughly 50 percent of grievances that are filed
10 against a facility are founded.

11 MR. CLINTON: Not the ones that I have
12 filed.

13 MR. MCFARLAND: May I ask both of you
14 about what I think was MR. CLINTON's suggestion that
15 housing be addressed, as a recommendation,
16 specifically that gay inmates be housed together so
17 that they would be free of predators?

18 MR. CLINTON: I think a sense of security.
19 When I was first housed at CMC dorms, there was only

20 one of me per 100 inmates in a dorm, which is very
21 aggravating. Because every time someone leaves,
22 another sees an opportunity to come up and talk to
23 you, to harass you.

24 MR. MCFARLAND: That is what you
25 recommended?

1 MR. CLINTON: Yeah.

2 MR. MCFARLAND: Is that what you think?

3 MR. CLINTON: I think it would be better.

4 It is very specific that CDC need to be aware not to
5 segregate them. Like, a lot of times they take them
6 and place them on Level 3 or 4 yard, to put them in
7 close quarters. Not every -- the word gay or
8 homosexual has very many facets to it, like saying
9 the word black. There is a variety of different
10 cultures within that one race.

11 So placing individuals on three or four year
12 yard with lifers. At least they had one Charles
13 Manson people there, a patch killer. Why would --
14 that serve no purpose. When people have something
15 to lose, they are more apt to behave.

16 MR. MCFARLAND: In other words, a Level 1
17 or 2?

18 MR. CLINTON: A Level 1 or 2, if they fit
19 there. You have your sex offenders which are

20 transgenders, which are interacting, having sex.
21 You need to be very specific. There are people that
22 are sex offenders that come in every culture, every
23 race, and you got people who are trying to be
24 functioning, saying this is who I am, I have a right
25 to my body. There is a difference there. You also

1 realize sex offenders have been in the system five,
2 six, ten times, and this is the behavior they are
3 told they are supposed to live.

4 MR. MCFARLAND: Would your suggestion
5 require or depend upon self-disclosure of one's
6 orientation by each inmate upon admission?

7 MR. CLINTON: Like, I don't think -- I
8 discussed that with daily county jail. I wrote a
9 complaint to Sheriff Baca. One of the things that I
10 noticed is that the jail does not communicate with
11 CDC. I don't think a lot of jails in California
12 communicate with CDC or CDC communicate
13 with jails.

14 In L.A. County they have a thing call K11
15 housing which is where they have four or five dorms,
16 and they put all your GLBTs in there.

17 MR. SEXTON: Who?

18 MR. CLINTON: Gays, lesbians, bisexuals
19 and transgenders. Sr. Deputy Bell and Lannin are

20 the ones that handle that. They have a great
21 program. They have been doing that for ten years,
22 housing people, keeping them safe. They are pretty
23 much keeping them safe. They keep a document, a
24 photograph of all these things of this individual in
25 a personnel file. This file that they have on them

1 doesn't go to CDC when the offender gets transferred
2 to state custody.

3 As we know, Chapter 147, within 48 hours you
4 are usually victimized. They are putting Paul
5 Anderson in a cell and after 30 to 90 days in
6 classification they realize it looks like Pamela
7 Anderson and it's already has been raped. There is
8 no communication. Jails need to tell CDC we have
9 somebody coming and you need to make preparations,
10 and they are not doing that. Like me, I got cut and
11 stabbed. I have scars to show it.

12 MR. MCFARLAND: When did you disclose your
13 orientation to CDCR?

14 MR. CLINTON: They knew when I got there.

15 MR. MCFARLAND: How do you know they know?
16 You don't know what they know. Tell me when did you
17 tell them that you were gay.

18 MR. CLINTON: I think I told them when I
19 was in Susanville. I don't remember exactly

20 which.

21 MR. MCFARLAND: It wasn't the first day of
22 incarceration?

23 MR. CLINTON: No. They don't ask you
24 that. The first thing, the process, you go through
25 the whole strip search, put you in cell. You go for

1 a tab score and you do some things. You don't see
2 your counselor or classification until about 30 to
3 90 days after that. When you see a counselor, your
4 counselor asks you all the questions. I don't
5 remember ever being asked that question.

6 MR. MCFARLAND: You are suggesting that
7 all gays be put in segregated housing together for
8 their protection which I am trying to figure out.

9 MR. CLINTON: Segregated housing.

10 MR. MCFARLAND: What you were suggesting
11 is that rather than reflexive protective custody in
12 ad seg, it would be better to house GLBT in K11
13 housing. So doesn't that presuppose that you would
14 have been willing and able to answer the question
15 about your orientation the very first day that you
16 arrived incarcerated?

17 MR. CLINTON: I don't believe I was asked
18 that. I thought it was kind of apparent. If you
19 look at me, you know pretty much.

20 MR. MCFARLAND: Is that the way you would
21 want that segregated housing to be determined, is on
22 the way that admission officer looked at you?

23 MR. CLINTON: I think hindsight, I look at
24 it now, I think that it would have been important to
25 ask me a specific question.

1 MR. MCFARLAND: Would you have been
2 willing to answer that?

3 MR. CLINTON: Yes.

4 MR. MCFARLAND: That day?

5 MR. CLINTON: Yes. I'm pretty apparent.
6 When you look at me, you know, you can tell. Pretty
7 much little bit fruity. It's like -- I look at
8 things that have happened to me now and I realize
9 now with acquired information of what could have
10 been prevented. See, I can't -- being new and
11 learning along the way, it's different than someone.

12 MR. MCFARLAND: That is what I am just
13 trying to explore with you in the time that we have,
14 trying to think through the logistics of your
15 suggested policy recommendation.

16 MR. CLINTON: I think that the jail,
17 personally I think the jail should tell them and
18 warn ahead of time. They transfer information
19 already that they are going to transfer the person

20 to state custody, if they know for a fact that this
21 person is GLBT and they have a bio on this person
22 and he's got breasts.

23 MR. MCFARLAND: You just said that Mr.

24 Baca you know does not communicate.

25 MR. CLINTON: He does not. I talked to

1 jail representative that was here and they said that
2 CDC doesn't want to accept the information. They
3 are putting it back on CDC, CDCR. One or the other,
4 either way both need to communicate with each
5 other.

6 MR. SEXTON: They could send it with
7 medical information. Mr. Chairman, I have one
8 question I have to go back to this. If we were
9 dealing with a violent crime situation in a
10 neighborhood, if we were dealing with it anywhere
11 else, one of the things we always talk to people
12 about is involvement, your activity in reporting,
13 community reporting, back to 101.

14 I hear you say that you basically are
15 condoning the actions of improper conduct of staff
16 and maybe even other inmates, while in your own
17 testimony today you know of personnel within CDC
18 that said inappropriate things, did inappropriate
19 things, said that you all deserved whatever group

20 they were referring to, that they deserved to have
21 something happen to them. Inappropriate.

22 MR. CLINTON: Yes.

23 MR. SEXTON: Yet it is not reported. What
24 has to be been done to get involvement by the gay
25 community inmates in general to report those things?

1 MR. CLINTON: I need to know 100 percent
2 that the person that I am saying the things about
3 will be safe. Will not be touched.

4 MR. SEXTON: Let's walk ourselves through
5 this. Whatever you say, I'm assuming, I believe
6 this is a unionized shop here. So there is going to
7 be a hearing. There is a liberty interest at large.
8 There is going to be a hearing in which you get to
9 have your say, they get to have their say. Part of
10 the American way, constitutional rights. The same
11 thing in regard to the confidentiality. I believe
12 you are talking about with regard to protecting
13 these persons. Eventually it is going to come out
14 to a court situation.

15 What kind of confidentiality are you looking
16 for? No matter what happens, if it moves forward in
17 a criminal aspect, it is going to have a hearing.
18 If it goes to an administrative hearing, the staff
19 is going to have, I'm assuming, some sort of liberty

20 interest, either a Loudermill hearing or something

21 is going to happen.

22 I keep hearing confidentiality. How do you

23 protect everyone and not have the liberty interest

24 of the other party involved, whether it be a

25 criminal action, a civil action or an employment

1 action? I'm missing that part. I think that is an
2 important part of this whole aspect. Eventually, no
3 matter how to try to shield it, keep it away from
4 folks, it will come out in a public venue, in some
5 sort of hearing. How do you work with that within a
6 prison system and maintain the interests that you
7 have?

8 MR. CLINTON: I think if I understand you
9 correctly, what I found in my experiences when I
10 came forward, I said things that should have been
11 handled. They weren't. And as soon as that
12 confidential memorandum was released by a
13 correctional officer, they turned on me like a pack
14 of jackals.

15 MR. SEXTON: When released. Just for
16 hypothetical. It wasn't released then, but yet you
17 reported the sergeant. He went up for disciplinary
18 action. Are you assuming that your either written
19 report or you might even testify, is that going to

20 create a problem for you in the long run?

21 MR. CLINTON: I'm not worried about me.

22 I'm out.

23 MR. SEXTON: How about if you are still in

24 the facility?

25 MR. CLINTON: I would be concerned about.

1 I would think twice. I'm an expendable resource.

2 As soon as I leave there is another bunk there;

3 another inmate will fill it.

4 MR. SEXTON: Had they taken you to the

5 hospital, had they gone through the normal

6 procedures that they described to us today and that

7 that individual had been charged criminally --

8 MR. CLINTON: At Trinity River? No, I was

9 never --

10 MR. SEXTON: I am saying hypothetically.

11 If we go back to the night of your incident, if they

12 had followed the protocol that they talked to us

13 about today, they followed the protocol that we saw

14 in the training, an investigation had come in, they

15 collected all the evidence, I am assuming there

16 would have been a criminal prosecution. That was

17 early on in your stay. There would have been a

18 criminal prosecution. You would still be an inmate.

19 Were you at risk in that situation?

20 MR. CLINTON: From the other inmate?

21 MR. SEXTON: Would somebody have found out
22 about that criminal prosecution?

23 MR. CLINTON: Probably. For instance, in
24 my civil litigation I have four names and CDC
25 numbers of people that were housed in the same way

1 were confidential, they put them CMC West, Unit 2.

2 They knew about it.

3 MR. SEXTON: I am trying to walk my way
4 through the process that you are recommending. Had
5 they followed the procedures they talked to us
6 about, had they done everything and had they done it
7 right, they had filed a criminal charge on this
8 gentlemen that raped you, would you have been in
9 danger to still be in the correction system and
10 charged somebody criminally for the offense against
11 you?

12 MR. CLINTON: I look back and I
13 understand, I think I understand what you are
14 saying. Would I have been safe? I don't think so.
15 For the reason that CDC is -- they are so large and
16 this is an example. I had four people that were
17 moved to inmate CMC Unit 2. Those four people, one
18 of them I trained as a clerk. One of them knew
19 about the rape and assault.

20 MR. SEXTON: Let's walk my way through the
21 process. Had there been a criminal charge filed,
22 how would CDC -- how would you have looked for CDC
23 to protect you for the remainder of your sentence
24 without putting you in ad seg?

25 MR. CLINTON: I don't know. You know,

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1 everything I've learned I've learned along the way.

2 I wasn't given the information.

3 MR. SEXTON: Knowing what you know now,
4 how would they protect you and still been able to
5 follow that initial -- on that initial complaint if
6 they had filed a charge that night how could they
7 have protected you for the remainder of your
8 sentence, wherever you were?

9 MR. CLINTON: I think I understand what
10 you're saying now. If they would want -- one thing
11 they should do is they should red flag me. Whenever
12 they put me in an institution, they should look
13 before they transfer people. The red flag should
14 say, okay, he is at this institution. What if the
15 other person that we are transferring from that
16 institution at that institution at the same time
17 this was released, how would that person have that
18 information? That is one of things I noticed they
19 don't do. Because four people were moved to that

20 yard. Two of them I had to pay with packages to be

21 quiet. That is another thing.

22 I think the system is so complex, I don't know

23 really how I would be safe. At the time that I had

24 said that I didn't know who to talk to. I didn't

25 have anyone to talk to. I didn't have anyone like

1 me to talk to. I don't know how I would be safe or
2 even if I would be safe because saying that you will
3 be in the system is hypothetical. If everything in
4 the rules and procedures were followed, there would
5 never been any civil litigation.

6 The truth of the matter, CDC doesn't do that.
7 The biggest problem with the system is they say they
8 train these people, but they don't. What they do,
9 they sign on job training, like when they did the
10 notice directors rules for prison rape elimination.
11 I actually questioned some of the officers about it.
12 The officers couldn't tell me what was on the front
13 page. You need to do a closed book test on that and
14 let them know. If people all know the procedures
15 and have the knowledge, on a closed book not knowing
16 what you are supposed to do if this happens read
17 over, okay, you are done. Here sign. That is
18 on-the-job training sometimes.

19 MR. MCFARLAND: MR. CLINTON, I know that

20 several of us have more questions. I don't want to
21 be inconsiderate of your stamina and feelings. How
22 are you doing? Would you like a break?

23 MR. CLINTON: I'm fine. I've been through
24 hell and back. I can handle it. I laugh about it.
25 I knew when people heard this, this is pretty out

1 there, but when things happen and when you have
2 people that you have to protect, correctional
3 officers will protect each other. Yeah, he is
4 screwed up. He's the one that released this. Okay.
5 You know that guys gets ostracized. That is the way
6 it works.

7 As time went on, I realized that that doesn't
8 make them not responsible for their actions. The
9 same as I paid time, responsible for my actions.

10 MS. ELLIS: You mentioned a journal,
11 274-page journal. Does that document still exist?

12 MR. CLINTON: Yes. I snuck it out to
13 attorneys.

14 MS. ELLIS: It is in someone else's hands?

15 MR. CLINTON: I have it at my mom's. I
16 have supporting documents with it.

17 MR. SEXTON: Is it possible to --

18 MR. CLINTON: Actually, I sent it, Fulner,
19 human rights person. I think she sent it to the

20 Prison Rape Elimination people in Washington. Then
21 it got rerouted to Erika Allen; Erika Allen sent it
22 to my mom. It would be a good idea, what is going
23 in there. It is a journal. Because my litigation,
24 it can't go to CDC, but I think that it may give an
25 idea of the daily things that people done, being

1 denied health when I filed an appeal because these
2 things been a great tool to understand the inside.
3 I think you guys are trying to do a good thing. And
4 I know we can't fix what happened to me. Maybe we
5 can figure out what is missing here is inmates. I
6 see a lot of people here that are willing to change
7 things. I don't see an inmate, and those are the
8 people that know what is really going on. They
9 really do.

10 MS. ELLIS: Let me ask you this: becoming
11 involved with Stop Prison Rape have you interfaced
12 with others who may have similar experiences?

13 MR. CLINTON: I stay in close contact. I
14 was called Mother Hen on the Unit 2 yard and I stay
15 in close contact with my chickadees. And if they
16 need anything, I am there; and they write me, they
17 have people call me. They need anything, if I have
18 to call and do, I am going to do a citizens on you,
19 straighten your act out. They know I am watching.

20 MS. ELLIS: Also referring to people who
21 are now out of prison that have had your kind of
22 experience and you have had a chance to talk with?

23 MR. CLINTON: There is not a group. I
24 have been E-mailing Parsell.

25 MR. MCFARLAND: T.G. Parsell, founder.

1 MR. CLINTON: He sent me a copy of his
2 book. I asked him to donate two books to the
3 library at CMC. I have them waiting to make sure
4 they are going on the shelf. A lot of things get
5 donated and they don't get to the shelf. I am
6 making sure those books are there. We have an
7 appeal, a group appeal with inmates there as far as
8 getting them gay and lesbian magazines. They are
9 not allowed them. They say they don't have money.
10 They carry a women's magazine in the men's library.
11 Figure that out. You're trying to give them
12 self-empowerment. That's very important to the
13 GLBT. Even went to church. I go to church in
14 prison. I am told I am unclean, filthy and an
15 abomination. I have to sit there and take that. I
16 can't get up because of security. I have to sit
17 there and take it.

18 There is not even Metropolitan Community
19 Church which is a gay friendly church which teaches

20 tolerance, talks about healthy, responsible
21 relationships. It is a total breakdown of how
22 they're to be treated because they have no power.
23 They have no self-empowerment. No tools. That is
24 very important that they give them that because then
25 they have respect for their person. When you are

1 not given that and stripped of all that, it's given
2 to heterosexuals. It's given to all races and other
3 religions, but you are not granted that. When you
4 go to church and you're told you're an abomination,
5 that makes a great sermon.

6 MR. SEXTON: Did you make any attempt to
7 get that church into prison?

8 MR. CLINTON: We have an appeal. The
9 appeal people system. Unfortunately, because I am
10 out now, it no longer affects me. So I have the
11 inmates doing an appeal. I am submitting the
12 appeal. Here sign it.

13 MR. SEXTON: Did you make a request while
14 you were in there for that particular church?

15 MR. CLINTON: We did an appeal that was
16 done on the MCC, to carry MCC information. That
17 appeal was lost. A lot of times appeals don't make
18 it.

19 MR. SEXTON: I am somewhat confused.

20 While in the facility, did you make a request for
21 that religious activity that you are talking about?

22 MR. CLINTON: I didn't know about the
23 activity until the fact that I was actually
24 released, able to acquire.

25 MR. SEXTON: While you were in the

1 facility, you did not make that request? I just
2 want to make sure.

3 MR. CLINTON: Let me make this very clear.
4 We did an appeal on the fact that they didn't bring
5 up about sexual orientation, being an abomination.
6 As far a MCC information, we didn't have access to
7 that information because we are incarcerated.

8 MR. MCFARLAND: Your answer is that you
9 didn't ask that the Metropolitan Community Church be
10 allowed to provide services in your facility, but
11 you did ask that other religious groups be censored
12 from what they would teach in the sermon relative to
13 homosexuality?

14 MR. CLINTON: Yes. Because even on CMC
15 west side where there is no transgenders, they are
16 all over on the east where the hormones are given.
17 They refer to them as the shes, which is a
18 derogatory term. The ministers, those ministers
19 donate time. They are regulated by main ministry.

20 When it would be brought up, we would say that's

21 uncalled for.

22 You can talk about having healthy, responsible

23 relationships. You are talking about abstinence in

24 prison, which is great for me. Less pressure on me.

25 I am happy for that. But they insist on bringing up

1 about homosexual are the ones that are tempting you.
2 You are the abomination. You are the ones that are
3 tempting the poor innocent heterosexuals. Just
4 because I walk down the roadway doesn't mean they
5 have any right to treat me that way.

6 MR. MCFARLAND: If the NPAC, National
7 Prison Rape Abomination Commission, were to consider
8 your suggestion, about housing all GLBTs together,
9 and somehow they were able to get around some of the
10 logistical threshold that we were talking about a
11 few minutes ago, what would you say to an individual
12 who would say, hold it, putting all of these folks
13 unless we are going to segregate those who even
14 among them distinguish between those who are
15 sexually active and those who are not, why are we
16 providing this special facility for those who on the
17 basis of their sexual proclivity when there is no
18 such thing as consensual sex? In other words, some
19 decision makers might have a real problem I would

20 think with saying, "Well, generally none of these
21 activities should be going on because it might
22 happen. And because we are trying to stop prison
23 rape, we are going to take all those who have a
24 particular orientation and we are going to let them
25 all be together."

1 Do you have a response? What would you
2 say?

3 MR. CLINTON: Since you are wording it
4 that way, I see a big problem.

5 MR. MCFARLAND: I am not espousing that.
6 I am saying how would you respond to that kind of a
7 -- if a state senator was saying, "We are not going
8 to do that. Why are we giving special housing on
9 the basis of their sexual orientation, including
10 individuals who would find that a very convenient
11 setup?"

12 MR. CLINTON: Yes.

13 MR. MCFARLAND: Heterosexuals are supposed
14 to get a 115 if they even engaged in the activity.

15 MR. CLINTON: New York is covering that
16 right now. Where they used to have them segregated.
17 That actually became more focused for predators. I
18 can see that being a problem.

19 MR. MCFARLAND: Is there an answer?

20 MR. CLINTON: No.

21 MR. SEXTON: Are there --

22 MR. CLINTON: I don't.

23 MR. SEXTON: Are there aggressors amongst

24 the gay. If we were to take that gay population,

25 are you going to find your sexual predators in the

1 gay community?

2 MR. CLINTON: Yeah. I mean it is.

3 MS. HALL-MARTINEZ: If I could just say a
4 little bit about that. We have thought about this a
5 fair amount, both looking at the Riker's Island
6 concept that he was referring to and the K11 unit in
7 L.A. It is a tricky issue. But I think that at
8 least as a threshold potential, sexual predators of
9 whatever sexual orientation have to be looked at
10 carefully and taken out of a general population,
11 whether it includes only gays or not.

12 MR. MCFARLAND: How do they do that? How
13 would you improve classification and assessment,
14 risk assessment? Is there a better tool that CDCR
15 and others should use, that they are not currently
16 using to identify predators?

17 MS. HALL-MARTINEZ: Just to look at their
18 past behaviors. Seems like their convictions or if
19 they have had behavior issues since being

20 incarcerated.

21 MR. MCFARLAND: Anything else?

22 MS. HALL-MARTINEZ: I don't have another

23 suggestion on that, actually.

24 MR. MCFARLAND: Would they self-disclose?

25 This is for both of you. I am trying to think.

1 MR. CLINTON: Not if it is going to be
2 considered punishment. What you may think of being
3 protective could be considered punishment. If I
4 understand what you are saying, in the DOM, in the
5 section that I quoted for L.A. County jail, the
6 DOM.

7 MR. MCFARLAND: What is the DOM?

8 MR. CLINTON: Department Operation Manual.

9 It is a manual that basically, when the rules and
10 regulations are in the Bible, are not passed, then
11 they have that. If that is not covered, that is
12 kind of called a general order which is what a
13 statistician types up and this is our new rule.
14 This is not covered and we need to cover this in
15 this institution. The DOM says that they have to
16 accumulate all the necessary information for proper
17 classification. They can't -- you can't classify a
18 GLBT unless you know the knowledge. That is the
19 reason why they need to get ahold of the jails and

20 say, "Hey, if you got somebody, give us -- before
21 you send -- you send them in 60 days, give us some
22 notice to make sure they're housed in a segregated
23 cell so he would be right next to the office." I
24 was housed up on 212 or 221 where I was cut and
25 stabbed for a skinhead wanted me to service a lifer

1 for cigarets. For \$3 for cigarets. I though it was
2 worth at least six. Of course, he didn't think it
3 was funny. I thought it was funny. I still have
4 the scars to show it. I was leaking blood all the
5 way back to my cell.

6 The officer said, "Clean it up. Somebody must
7 have cut themselves with a razor."

8 That affects my classification, where I'm
9 going to go. I am a snitch. It is a bigger
10 problem. But you know the common sense is the
11 correctional officer up in the bubble, "Gee, there
12 is skinhead on the homosexual doors. Apparently
13 they're rivalries to each other. You should get
14 that guy off the door. He is planning something.
15 To use this person as a predator." If they had me
16 next to the office where I should be, he can yell at
17 the inmate and say get the off the door. You know,
18 putting me with a transgender would be fine because
19 it would be fine together in the same cell. That is

20 what the whites ended up doing later on. They put
21 me with a transgender that came on there, came into
22 that facility.

23 MR. SEXTON: Was he in there at the time
24 you came in?

25 MR. CLINTON: No.

1 MR. SEXTON: Was there anybody that met
2 that criteria when you came in?

3 MR. CLINTON: Not that I know of. When
4 you first go into classification reception, you
5 really don't know. You are still in shock. You
6 are, like, okay, your first term here. I just
7 walked through the gates of hell. You find out that
8 Billy Joe --

9 MR. SEXTON: That is a pretty scary place,
10 isn't it?

11 MR. CLINTON: Very. We have one guy down
12 in the -- three cells down serving 87 years for life
13 for shooting a cop. I am housed in the same
14 facility he is. You say, okay, all I did was sell
15 some drugs to somebody.

16 MR. SEXTON: While we're talking L.A.
17 County, isn't that 23- or 24,000 inmates in that
18 facility?

19 MR. CLINTON: They have their own --

20 Lannin and Bell keep up the 5,400. They are well
21 taken care of. They have capital. They have NA.
22 They have all their accesses to privileges. The
23 problem with CDC is when they segregate you, they
24 put you somewhere. You no longer have those
25 privileges. I would no longer be able to go to

1 camp. Just because I am gay doesn't mean I have to
2 be sexually active. That is just what I am; that is
3 the way I'm designed.

4 MS. ELLIS: Let me ask you something. As
5 a gay man, once you were convicted and sentenced to
6 an institution, what were your expectations and what
7 ideas did you have about what life would be like for
8 you and were you pretty sophisticated and savvy
9 about incarceration when you walked through the
10 door? You said you were going through the gates of
11 hell, but --

12 MR. CLINTON: No. Some of the queens that
13 were in L.A. County sat down with me and said,
14 "Okay. You are going to prison. This is what is
15 going to happen. This is what you need to watch out
16 for." They try to school you a little bit. But
17 there is nothing stopping the jail from developing a
18 course to let them know this is where you are going
19 to go, this is what you don't have to be when you go

20 there. You can be respected if you demand respect.

21 If you want to be a hooker working a corner of the

22 prison, that is not tolerated anymore."

23 But when you go in we are told, "Okay, you are

24 a cocksucker." I hate that word. That is what we

25 are called. If I drunk out of this, you can't drink

1 out of it 'cause I am filthy. You can't eat after
2 me because I am filthy. You can't wear anything I
3 have. You can't be in the same cell unless I am
4 servicing you. That is realities.

5 MR. SEXTON: Have you seen the NIC videos
6 that are being talked about? Do they meet the
7 criteria?

8 MR. CLINTON: I haven't seen those. I
9 notice they talk about the videos, but they say men
10 and women in prisons. But I notice nothing about
11 transgender. When that was being talked about
12 nothing about transgender mentioned. I don't know
13 if it is in there or not. I really don't.

14 MR. MCFARLAND: I want to follow up on
15 Sheriff Sexton's question a while ago. Is there --
16 we want to get a balanced viewpoint.

17 Is there anything that you heard this morning
18 that you would dispute from any of the panelists,
19 call attention to your difference of opinion? I

20 know that is hours of testimony. Something, did you
21 circle it in your notebook, something that really
22 sticks in your craw that you want us to know?

23 MR. CLINTON: I know they are really
24 trying. I think they have good intentions, but I
25 think one of the biggest problems with the system is

1 -- apparently we are dealing with educated people in
2 the room. Most of these people have at least a
3 degree of some sort. But you are given a
4 correctional officer who has a GED, a job, that goes
5 through a few trainings and everything else. He
6 doesn't have a degree, and you are expecting
7 professional conduct, and I don't see it happening.

8 When I was on CMC West, Tier 2, Officer
9 Bryant, great officer, very intelligent, had
10 knowledge, has a degree, and you could talk to him
11 and he used common sense. Then I go to the officers
12 which are just badge wearing thugs. And I think
13 that if CDC really moves its focus towards not
14 trying to fill officers, trying to make these
15 officers professional with a professional salary,
16 that usually a degree takes, start looking towards
17 hiring people that are in a university, that are
18 graduates with social worker's degree dealing with
19 problems with social society and start focusing on,

20 "Hey, you want to become a correctional officer?

21 You can make this much and apply any degree toward

22 helping us." I think it would resolve a lot of

23 problems.

24 But I think that -- I don't know if that is

25 unrealistic. But I notice when you talk to people

1 in the prison system that have a degree, not talking
2 about going through training or whatever they do,
3 actually has a college degree, they dedicate this
4 amount of time developing the degree, I notice a big
5 difference in their attitudes towards us and the way
6 they treat others. That when you got this guy that
7 was a farmer, no offense to farmers, but he comes
8 out, he becomes a correctional officer to take care
9 of his kids, which is not a problem, that when he
10 doesn't even educate himself on a personal level,
11 you decide to read. I went to read about Folsom.
12 Started to be built in 1878, to learn a little bit
13 about the situation where I was going to.

14 MR. SEXTON: What is your educational
15 background?

16 MR. CLINTON: I have almost a bachelor
17 in art, social. It's like I find that that is going
18 to be the biggest loophole, is because they don't
19 read. And being I was disciplinary clerk, they

20 can't even spell. I thought I was a bad speller.
21 They cannot spell. And they are, like,
22 disciplinary, they have to handle riots and
23 everything else. Even riot situations could be
24 avoided. When I see a group of inmates outside,
25 eight or ten of them in little packs, if I can spot

1 it, I need to step aside because in prison when in
2 prison, when a riot happens, women and children over
3 here. I am considered one of the women and
4 children. I don't have to be involved in the riot.
5 That is where they put me. That is prison politic
6 thing. That is a big issue that they need to
7 address.

8 MR. SEXTON: Just have one other question.
9 To me it goes to the crux of the matter. What can
10 we do to prevent -- one way to solve this is to try
11 to reduce our prison population that continues to
12 climb.

13 MR. CLINTON: Yes.

14 MR. SEXTON: Where do you see the main
15 problem getting folks into jail and how do we
16 prevent that?

17 MR. CLINTON: I think there is education.
18 I think that -- we'll use Billy Joe Bob goes over
19 there and he realizes he has a fourth grade

20 education. He can't make the money that a college
21 degree makes. He has to go out there and sell
22 drugs. That is why he was making 250,000 a year
23 transporting to New York or Chico. You can't make
24 that, can you? See what I am saying? So it is,
25 like, a mentality of money.

1 And I think that education is a big factor,
2 knowledge and education develops tolerance and
3 wisdom. That is where that comes from. And I think
4 putting it out there and I think even like they
5 mention about, well, this person has a misdemeanor,
6 we don't want to charge him. We are setting a
7 standard and a point, that the DA prosecutes them,
8 inmates now know rules have changes. Now we are
9 going to be prosecuted even if a misdemeanor. Now
10 if I do a felony, I better think twice about this.
11 Right now I may get a hundred extra days if I am on
12 good behavior. I get that time back for beating
13 somebody up.

14 MR. MCFARLAND: Thank you. Why would you
15 lose points for going to ad seg for protective
16 reason as opposed to disciplinary?

17 MR. CLINTON: That is a good thing you
18 brought up. What happens when I am in camp was I
19 was getting two for one credits.

20 MR. MCFARLAND: That means?

21 MR. CLINTON: Every day I serve I get two
22 days. That is how I managed to serve three years, a
23 little more than that because of the change. But
24 CDC's biggest Achilles heel is a credit issue. That
25 is what is bogging this down. The way they apply

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1 credits, sometimes is not very fair and litigation
2 and everything else, and it is bogging down the
3 system.

4 What you are seeing right now began almost
5 three or four years before the bridging program was
6 implemented. They didn't credit until you got a
7 job. Now they do it for bridging with reception.
8 We start the credits earlier. What you are seeing
9 now, impact was probably three or four years, behind
10 times. Just like politicians pass laws. You don't
11 see the effect until later on.

12 But when I went in segregation because I no
13 longer had a job, credits are, quote, a privilege.
14 I went in for what they call D1 status which is
15 punishment. It is basically I go to 85 percent of
16 my time so I go from 33 to 85. So when I was in --
17 the moment that I quit talking to them was the
18 moment I got what we call legal status summary, my
19 time changed and I gained one year, nine months and

20 five days.

21 MR. MCFARLAND: Gain as?

22 MR. CLINTON: Additional time. My day

23 turned out to be 2009, and this was like, oh, Mother

24 of God, I am not talking to you no more. I severed

25 that bridge like that. And then once I got

1 transferred to CMC, they reduced it to nine months.
2 You know, they said now you are A1, you are put in
3 A1 so we are going to reduce your time a little bit
4 more. You should be happy where you are at and you
5 should be happy with the time you're doing now. You
6 are at CMC. That is their answer for my losing the
7 time rest of my time.

8 MR. MCFARLAND: MS. HALL-MARTINEZ, if you
9 or SPR have any additional, later views or thoughts
10 about anything we talked about, particularly how it
11 would work to implement your suggestions about
12 separate housing, about not having a standard
13 protective custody in ad seg, how to realistically
14 determine who is going to be identified as predators
15 in addition to their criminal record and
16 incarceration record, any of those things, you folks
17 have been thinking about this for years, and I just
18 want to tell you that as far as we are concerned the
19 record remains open for any information from you and

20 MR. CLINTON.

21 I want to thank you for your --

22 MR. CLINTON: Bothering you.

23 MR. MCFARLAND: No. For being willing to

24 share your story, incredibly painful, incredibly

25 disturbing to all of us, and to the extent that you

1 can in hindsight think about how this might work
2 differently, you have the benefit of hindsight and
3 particularly marginalized community. So anything
4 that you can think of that you would like to suggest
5 to the Commission or a line of questioning when we
6 are questioning others, the best or worst practices
7 next year, we are all ears.

8 MR. CLINTON: I am more than willing to
9 help any way I can and develop advocate area, I have
10 no problem with that. As long as everybody kept
11 open minds. I will help CDC any way I can make it
12 better for them.

13 Anyone want my E-mail address or phone number,
14 I would be more than happy to help anyone to stop
15 it.

16 MR. MCFARLAND: What is the status of your
17 lawsuit right now, what stage?

18 MR. CLINTON: I think it is served
19 everyone. They did that. They told you, you got to

20 fix this before we accept this. We got past that.

21 We have too many. We're just going to take these.

22 MR. MCFARLAND: You are represented by

23 counsel?

24 MR. CLINTON: No.

25 MR. MCFARLAND: Pro se?

1 MR. CLINTON: On my own. But I have all
2 the comments. I kept a very closed lip because I
3 found in CDC I think upper echelon knew what was
4 going on in lower levels, they would be livid.

5 MR. MCFARLAND: I thought you said you
6 gave your 274-page diary to your lawyer?

7 MR. CLINTON: I sent it out to a lawyer.
8 You have to send legal mail.

9 MR. MCFARLAND: You did not retain that
10 lawyer?

11 MR. CLINTON: No. I sent it out legal
12 mail so they wouldn't have it, so I would have a
13 journal of everything that happened. If anything. I
14 was hoping to make a book out of it and help other
15 people know or allow other things in the future to
16 develop that other people can use that resource and
17 say, "Gosh, this is what is going on here, going on
18 here."

19 There is times they would refuse to give me

20 paper. We know what you are doing. I would be
21 writing. They wouldn't give me paper. I would have
22 to write on the back of stuff, all sorts of
23 things.

24 MR. MCFARLAND: Thank you both and thank
25 you for coming up and providing this firsthand

1 testimony.

2 MS. HALL-MARTINEZ: Thank you.

3 MR. MCFARLAND: I wish you the best.

4 MR. MCFARLAND: We are in recess till 9:00
5 tomorrow morning.

6 (Panel 4 concluded at 4:00 p.m.)

7 (Hearing adjourned at 4:00 p.m.)

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