

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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