

1 question on page --

2 DR. OWEN: I don't know how to type.

3 MR. MCFARLAND: -- Page 3, second

4 paragraph, your brief review of research.

5 DR. OWEN: Yes.

6 MR. MCFARLAND: Second line, second

7 paragraph. Should it read the few studies mentioned

8 indicate prevalence of sexual victimization, and

9 insert the words "of women"?

10 DR. OWEN: Yes.

11 MR. MCFARLAND: Appears to have been

12 lower.

13 DR. OWEN: Yes.

14 MR. MCFARLAND: Thank you very much.

15 We can talk with you for days, and I wish we

16 could. But we are going to now ask for a

17 representative -- rather than taking a break, we are

18 going to ask either Warden Malfi or Mr. Dovey, both.

19 We understand they would like an opportunity to

20 comment on or correct anything from their  
21 perspective that needs to be stated. Warden Malfi  
22 has an engagement, an emergency telecom in 20  
23 minutes.

24 MR. DOVEY: Ms. Still and I have the same  
25 emergency.

1                   MR. MCFARLAND:  As we are done with this  
2  impromptu panel, we will take a five-minute break  
3  and then invite our next panel.

4                   You are both still under oath.

5                   Is there, first of all, any testimony of a  
6  CDCR employee this morning that you would like to  
7  correct, clarify or supersede?

8                   MR. MALFI:  Yes.  I think there were some  
9  statements made and I would hope that we can clarify  
10 them and go over them real quick and clear it up.  I  
11 don't have all the -- I thought you would ask the  
12 questions, to be honest.  I have them off the top of  
13 my head, but I can do it either way.

14                  MR. DOVEY:  I think they related more to  
15 protocols when we move offenders out for --

16                  MR. MALFI:  Housing.

17                  MR. DOVEY:  The whole issue of what are we  
18 training our staff, what does the policy document  
19 that we provided you actually say.  So I think from

20 a local perspective I think the warden has a few  
21 comments from a little higher altitude perspective,  
22 and I have some other comments.

23 MR. MALFI: I would like to start by  
24 saying both of the staff members did the best they  
25 could under the circumstances. I think they believe

1 their testimony was correct, and I think it was  
2 correct in their viewpoint to a point.

3           The one thing is the training, obviously.  
4 There appears to be a breakdown at my facility, and  
5 we are not going to pass excuses or put it on  
6 somebody else. The training is being conducted.  
7 However, it appears for some reason the test was not  
8 being conducted at the end of training.

9           MR. MCFARLAND: The exam on the four-hour  
10 training?

11           MR. MALFI: Yes, sir. I think the  
12 sergeant said they were just using the PowerPoint to  
13 teach, and it appears that might be somewhat  
14 correct. I think he was also using a lesson plan,  
15 but not in proper conjunction. So we will fix that;  
16 we will get right to it. Obviously, we will make  
17 sure the test is being administered. In his  
18 defense, I don't know if the proper word is defense.  
19 In his --

20 MR. MCFARLAND: He doesn't need any

21 defense.

22 MR. MALFI: He did go to the training like

23 all the master trainers were given, and there were

24 some memos that came out that said, "Hold up on it."

25 I don't know if it was received at our prison prior

1 to me coming there. The bottom line, we got off  
2 kilter. We will get to it. We will have a memo  
3 back to you, to your panel, within two weeks. I  
4 will get the address and we'll have it corrected.

5 MR. MCFARLAND: Thank you.

6 MS. ELLIS: Thank you very much.

7 MR. MALFI: Thank you.

8 MR. MCFARLAND: I have specific questions,  
9 but, Mr. Dovey, anything from a little higher  
10 altitude you want to clarify or correct?

11 MR. DOVEY: As I told you, I would try to  
12 spend as much time with you during the last two days  
13 as I possibly could. It was fortuitous I was here  
14 this morning, I believe. As one of the panelists  
15 testified to earlier, sometimes despite the best  
16 intentions, there might be gaps between the top and  
17 the line, and, obviously, that is what we found.  
18 But I see these as opportunities to take action, and  
19 I don't mean in terms of a retaliatory sense.

20           For example, as we were kind of contemplating  
21    what this means, it means that I need to review the  
22    lesson plans of all other 32 prisons pretty quickly.  
23    If we are half-way through the training block, it is  
24    imperative that based on the lesson we have learned  
25    through this exercise that we need to make darn

1 sure, despite the clear direction we provided, that  
2 the lesson plans are being followed and that there  
3 are not any questions that need to be answered. So  
4 that is one overview statement.

5 Another view is, as I recall coming back from  
6 Florida less than two years ago as the deputy  
7 director training for the NIC, less than two years  
8 was the first time we heard about PREA in  
9 California. So when I look at the monumental  
10 changes that we have made already in our regulations  
11 and our Department policy and training plan on  
12 providing the training and establishing SART teams  
13 at institutions and getting people to begin to talk  
14 about it, you can't do anything with a problem if  
15 you don't put it on the table and try to address it.  
16 And so for our Department and for the adult  
17 institutions, I am glad you came. I am glad I came,  
18 and I think that that would be clearly one of the  
19 recommendations we would want to add to the

20 exhaustive list you already have.

21 MR. MCFARLAND: These are addressed to  
22 either of you, whoever wishes to address them. What  
23 prisoner information do you request from a sheriff's  
24 office or jail that they are sending?

25 MR. DOVEY: It varies on counties. If it

1 were up to us, we would request everything we can  
2 get. Not every county does exactly the same  
3 presentence or probationer's report. Some counties  
4 do a much better job than others. We have engaged  
5 other counties in briefings with their  
6 transportation staff or transportation deputies. If  
7 there are high risk prisoners, if it requires  
8 special monitoring, gang members, persons who  
9 require more supervision than others because of  
10 particular needs, then we always ask for that  
11 information.

12 MR. MCFARLAND: Do you ask about sexual  
13 orientation?

14 MR. DOVEY: I can't tell you that we do.

15 MR. MALFI: I don't think that's actually  
16 included.

17 MR. MCFARLAND: Do you ask for any  
18 information that is relevant to the North Star  
19 vulnerabilities matrix?

20 MR. DOVEY: No. I can tell you we do not.

21 I can tell you one thing that is a promising

22 experiment that we're engaging in now. It's a

23 strategy that we have been involved with with San

24 Diego, and it has a result of a Senate bill that

25 passed a couple years ago, and we are now trying to

1 leverage the work instead of San Diego County doing  
2 all of their workups and then we might get the  
3 information and we might not, we are trying to  
4 leverage that work by pooling our resources and  
5 doing the reception and evaluation of our offender  
6 before he actually leaves the county jail.

7 MR. MCFARLAND: I notice, Ms. Still, I've  
8 had an answer to the last question I asked her to  
9 come on up. You are still under oath.

10 MS. STILL: Two quick responses. One is  
11 the North Point compass that was spoken to earlier,  
12 the Department is basically implementing that  
13 reentry program, and we are pursuing a pilot to  
14 expand that with a goal being upon intake as part of  
15 our risk assessment. It is going to take us a while  
16 to get there. What we do currently is we do an  
17 initial housing review. We have a very specific  
18 form; it is an 1882 form that we screen every inmate  
19 coming in off the bus. That is part of our trying

20 to determine appropriate housing for safety, not

21 only the offender, but also our staff.

22 MR. MCFARLAND: I was asking about what

23 you request of the sheriff's office.

24 MS. STILL: What we request, as Mr. Dovey

25 said, basically it is different by what counties

1 provide to us as coming in the door. Typically,  
2 very little.

3 MR. SEXTON: You use the NIC  
4 classification?

5 MS. STILL: No, we have a departmental.

6 MR. SEXTON: Is it based on the NIC?

7 MS. STILL: No. It's departmental classic  
8 by UCLA, Richard Burkert was created and  
9 revalidated. But we are going to implement their  
10 risk needs that the compass North Point is part of  
11 not only that but our educational -- to complement  
12 our classification system. But in terms of the  
13 SB 618, like Mr. Dovey said, there is a law that  
14 passed so that we could partner and get more  
15 information from counties, not only from a safety  
16 but from a not duplicating medical services in  
17 knowing who is coming to us, what medical or mental  
18 health needs.

19 MR. MCFARLAND: You have a legal right

20 under SB 618?

21 MS. STILL: SB 618 gives us the legal

22 right to partner with three counties, a pilot

23 project. The Legislature's intent is for us to

24 eventually work with all 58, but they had to start

25 with a pilot, and the first pilot to be selected and

1 implemented is San Diego, and the two subsequent  
2 counties are still in the process of being selected.

3 MR. MCFARLAND: How do you react to the  
4 idea of having independent outside investigators  
5 look into sexual assault rather than investigating  
6 yourself?

7 MR. DOVEY: We are hoping to whatever  
8 inspection transparency that would be required. But  
9 in many ways I feel that we already have that. I  
10 know you got a good overview of our current process  
11 this morning. I don't want to duplicate that  
12 testimony. But the result of our investigations are  
13 now published on the worldwide Web for anyone to  
14 look at. That is pretty transparent. The Office of  
15 the Inspector General does that for us. Many of the  
16 incidents require immediate notification to the  
17 Bureau of Independent Review who works for the  
18 Inspector General. So incidents like an in-prison  
19 rape would require that notification. So that we

20 give the Bureau of Independent Review real time  
21 discretion as to whether or not they want to roll  
22 out to the prison right then, be a part of  
23 monitoring what they observed in terms of  
24 performance.

25 MR. MCFARLAND: Is that Matthew Gates'

1 [phonetic] outfit?

2 MR. DOVEY: That is Matthew Gates.

3 MR. MCFARLAND: His term cannot be  
4 truncated by the governor; is that correct?

5 MR. DOVEY: He reports not to me or the  
6 agency secretary, but to the governor.

7 MR. MCFARLAND: He is not at the pleasure  
8 of the governor, as I understand.

9 MR. DOVEY: Right.

10 MR. MCFARLAND: What information -- do you  
11 get information currently from counties, county  
12 jails, if a prisoner coming your way has been  
13 sexually assaulted or alleged they've been sexually  
14 assaulted?

15 MR. DOVEY: It is hit and miss.

16 MR. MCFARLAND: Do you ask for it?

17 MR. DOVEY: We ask for all the information  
18 they could possibly provide us. We have met -- I've  
19 been to meetings, for example, with officials from

20 Los Angeles County Sheriff's Department so that we  
21 could not only get casework information, but medical  
22 information. Many times with duplicate medical  
23 evaluations that have already been completed by  
24 another county, and so you are talking about  
25 continuity of care and not wasting tax resources.

1 It would be very helpful. That is another reason  
2 why we are hoping that pilots like the one at San  
3 Diego would help us.

4 MR. MCFARLAND: Warden Malfi, what do you  
5 tell -- does your staff tell prisoners when they are  
6 at orientation when they first arrive, about sexual  
7 assault, about department policy, about how to  
8 protect themselves, if anything?

9 MR. MALFI: It is in our orientation book,  
10 and we believe we have a zero tolerance over it. We  
11 try to do the best we can to have people speak out.  
12 I heard several people testify about that. I think  
13 that probably is a problem even in prison, to get  
14 people to come forward. But I think we are doing  
15 the best we can. I really believe that.

16 MR. MCFARLAND: Do you expect your  
17 oriented -- the COs who do the orientation of the  
18 new fish to, without fail, tell them there is a zero  
19 tolerance here, that you are actively soliciting

20 every way possibly to find out about incoming  
21 predatory activity by inmates or a staff person, and  
22 they will have confidentiality, they will not go to  
23 ad seg, et cetera, et cetera? Is that  
24 unequivocally, regularly, as a matter of policy and  
25 protocol told to every new fish?

1                   MR. MALFI: I don't know if it is told the  
2 way you are saying, but I know that my awareness of  
3 listening to this panel for the last two days'  
4 testimony, that I will go back and I'll do  
5 everything I can to make sure it is put that way.

6                   MR. SEXTON: Can we get one orientation  
7 handbook? I would love to see one.

8                   MR. MALFI: Yes.

9                   MR. MCFARLAND: I just had one last  
10 question. In CDCR, do male COs do pat downs and  
11 and/or strip searches of females?

12                   MR. DOVEY: We do cross-gender searches  
13 last year.

14                   MS. STILL: September 2005.

15                   MR. SEXTON: Question for Warden Malfi.  
16 If an inmate reports that a sexual assault took  
17 place six weeks prior to. This morning we were told  
18 there would probably be little investigation done.  
19 Would there be -- once a crime is reported, would

20 there be a follow-up investigation?

21 MR. MALFI: We would definitely follow up

22 on that. I don't know who said that. We would

23 definitely follow up on that. I am sure you are

24 well aware from the medical standpoint there is not

25 too much to do after six weeks. And I don't know if

1 the person was trying to get across that maybe  
2 evidence would have been lost or whatever, but we  
3 are definitely still going to look into it and take  
4 appropriate actions.

5 MS. ELLIS: I have one question related to  
6 family members of victims, rape victims. Is there  
7 pressure? Do you get calls? Is there interface  
8 with family members? What happens to the family?

9 MR. DOVEY: I can speak to that. I have  
10 been through quite a few investigations when I was  
11 warden. And I can tell you that I was on a first  
12 name basis with family members. I have -- the  
13 question was: Do you know of anybody who has been  
14 fired because of this kind of activity, been  
15 disciplined? I can tell you I have fired several  
16 people because of this, disciplined several others.  
17 And I have had to really reach out to victims  
18 because there is a lack of trust of some kind, not  
19 because the staff working for you aren't doing

20 everything they possibly can, but by that time there  
21 is such a lack of trust in the system that it really  
22 takes sometimes a warden's involvement to really  
23 make sure that the people feel safe. That is  
24 exactly those two wardens' testimony.

25 MR. SEXTON: Is there any possibility that

1    PREA's going to make it into your Bible?  That is  
2    the inmate's comment.

3                   MR. DOVEY:  I think it is on its way there  
4    now.

5                   MR. SEXTON:  Thank you.

6                   MR. MCFARLAND:  Thank you both very, very  
7    much.

8                                   (Conclusion of Panel 7.)

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