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PANEL 6

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

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

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

(Oath administered by Mr. McFarland.)

MR. MCFARLAND: Mr. Gennaco.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20 should they decide to press forward with reporting

21 the crime.

22 Finally, assailants facing life or long-term

23 sentences often feel that they cannot be further

24 effectively punished by the system, so have little

25 to lose in conducting further violent acts. On the

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 significant jail convictions, and they know that.

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

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

10 One, examination of current jail housing
11 design.

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

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

24 Two, surveillance cameras.

25 Cameras can go far to enhance the ability of

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

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

11 Three, jail staffing.

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

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

23 Overcrowding.

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

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

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

14 Five, classification and housing decisions.

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

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

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

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

8 Six, programming.

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

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

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

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

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

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

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

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

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

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

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

25 As noted above, after a spate of jail murders

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

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

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

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

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

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

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

20 responsible for the important issues in our jails.

21 Thank you.

22 MR. MCFARLAND: Thank you.

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

24 notice and even shorter than some of the others on

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