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PANEL 5

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MR. LEWIS: Hi, good morning.

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MR. MCFARLAND: Do you have any initial

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remarks or opening statement that you wanted to

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make?

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

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to write down my testimony. Due to my work schedule

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I was not afforded that opportunity.

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MR. MCFARLAND: We are grateful that you

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

12

all, briefly summarize your professional experience

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in corrections.

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MR. LEWIS: I have 22 years of experience.

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The last two years I have been in training as the

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in-service sergeant at CSP-Sacramento, Level 4

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institution, right next door. Prior to that, I

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served as an academy instructor at the Galt academy

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for basic correctional officers. I was there for

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 MR. LEWIS: Correct.

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

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

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

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

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

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

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

1 with Operational Procedures, OP 136?

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

5 MR. SEXTON: Thank you.

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

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

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

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

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

25 MR. MCFARLAND: If this is just peculiar

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

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

11 MR. MCFARLAND: Medical Center?

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

20 showers, things like that trying to preserve the
21 evidence.

22 The procedures are relatively the same. It is
23 just where you take them and how you process them
24 might be different.

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

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

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

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

12 MR. LEWIS: That is correct.

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

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

19 MR. MCFARLAND: Is prisoner sexual assault

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

21 MR. LEWIS: There is always a potential

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

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

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

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

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

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

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

12 MR. LEWIS: No, I did not.

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

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

19 MR. MCFARLAND: Why is that?

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

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

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

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

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

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

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

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

25 MR. MCFARLAND: I am not talking about

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

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

14 MS. ELLIS: Good morning, sir.

15 MR. LEWIS: Good morning.

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

19 MR. LEWIS: Okay.

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

25 MR. LEWIS: Those are almost two different

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

2 Are we consoling and trying to counsel the

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

4 no.

5 The officer's responsibility is to sound the

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

7 individuals, to get additional staff as needed, and

8 then we are going to escort them to the medical

9 treatment area where they will be processed out.

10 Transportation teams will be coordinated and an

11 investigative unit will be summoned. And at that

12 point they are transported to the hospital.

13 MS. ELLIS: Typically, how long would the

14 victim have to wait before the remainder of the

15 victim's assistance protocol will be placed into

16 effect? For instance, the validation, ventilation,

17 prediction, preparation so that that victim is

18 receiving some kind of support from a psychological

19 or emotional standpoint? When does that begin?

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

1 with their assault and things that have happened.

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

4 MR. LEWIS: Yes.

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

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

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

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

17 MR. LEWIS: Yes, there is.

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

20 anyway. Why are counseling services not given

21 immediately to an inmate upon report?

22 MR. LEWIS: I would not really be

23 qualified to answer that. It would be pure

24 speculation on my part, but for somebody in

25 administration level.

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

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

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

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

13 MR. SEXTON: Thank you.

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

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

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

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

22 MR. MCFARLAND: What, frankly, is the

23 understanding among correctional officers as to what

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

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

1 nature towards prisoners or around prisoners?

2 MR. LEWIS: The policy is actually pretty

3 relatively clear as far as the rules and regulations

4 state that you are not allowed to use profanity.

5 You are not allowed to use indecent comments towards

6 inmates, parolees or even visitors of inmates or

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

8 look at the correctional officer matrix, there are

9 protocols to deal with somebody who has those

10 allegations made and they were substantiated.

11 MR. MCFARLAND: Are those protocols ever

12 used?

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

14 MR. MCFARLAND: Can you think of an

15 instance where they have been?

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

17 hear stories. You hear this happened. You hear

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

19 an allegation or a story that an officer at Mule

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

25 MR. MCFARLAND: Can it be possible to get

1 a copy of the matrix?

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

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

6 MR. LEWIS: Yeah, disciplinary matrix.

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

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

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

20 that they overheard. Does that typically happen?

21 If you and I were working together and you overheard

22 me engaging in something inappropriate?

23 MR. LEWIS: If you and I were working

24 together and I heard you making some inappropriate

25 remarks to an employee or inmate, I would probably

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

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

8 MR. LEWIS: Yes.

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

12 MR. LEWIS: As far as retaliation?

13 MR. MCFARLAND: Yes.

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

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

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

1 heard about?

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

5 Yes, I have.

6 MR. MCFARLAND: How often?

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

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

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

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

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

21 MR. MCFARLAND: Most everybody knows that?

22 MR. LEWIS: Most people know that they are

23 restricted from grounds.

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

25 correction officer back when you were working there

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

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

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

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

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

20 preyed upon or may be preyed upon?

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

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

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

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

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

20 MR. MCFARLAND: R suffix, child molester?

21 MR. LEWIS: Child molester, a lewd and

22 lascivious act against children under the age of 18.

23 There is a whole variety of different reasons you

24 would assign an R suffix.

25 MR. MCFARLAND: Any other characteristics?

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

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

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

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

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

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

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

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

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

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

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

9 MR. MCFARLAND: That is the Investigation

10 --

11 MR. LEWIS: Services Unit.

12 MR. MCFARLAND: -- Services Unit.

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

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

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

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

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

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

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

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

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

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

25 MR. MCFARLAND: Yes.

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

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

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

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

11 MR. SEXTON: Why not?

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

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

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

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

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

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

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

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

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

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

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

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

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

3 MR. LEWIS: No, I do not.

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

8 MR. LEWIS: No.

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

12 MR. LEWIS: No, I have not.

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

19 MR. LEWIS: To immediately notify your

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

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

25 MR. LEWIS: No.

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

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

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

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

16 MS. ELLIS: I have a --

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

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

24 MR. LEWIS: Could I be held accountable?

25 MR. MCFARLAND: Yes.

1 MR. LEWIS: Absolutely.

2 MR. MCFARLAND: How so?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 who the inmate chose.

23 Does that raise concerns? Certainly, it does.

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

25 want to allege that I was sexually assaulted by my

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

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

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

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

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

25 MS. ELLIS: I didn't understand that

1 originally.

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

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

7 MR. LEWIS: Yeah.

8 MS. ELLIS: Upon travel to the hospital?

9 MR. LEWIS: Correct.

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

12 MR. LEWIS: Go ahead.

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

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

19 Why is alert listed first?

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

23 MR. SEXTON: Why?

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

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

2 you may, in fact, have victims.

3 MR. SEXTON: What kind of environment are

4 you working in?

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

6 maximum security prison.

7 MR. SEXTON: Thank you.

8 MR. MCFARLAND. Do you have any

9 representatives from the district attorney in your

10 facility?

11 MR. LEWIS: Yes. I believe Officer Viles

12 would be more qualified to answer that, but I

13 believe there are DAs upstairs in the facility.

14 MR. MCFARLAND: What is your understanding

15 of when they should be informed -- protocol

16 described to them?

17 MR. LEWIS: As soon as investigations

18 deems necessary to contact them.

19 MR. MCFARLAND: So once you contact

20 investigations, it is out of your bailiwick?

21 MR. LEWIS: Correct.

22 MR. MCFARLAND: When you teach others, you

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

24 the DA gets involved?

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

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

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

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

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

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

24 MR. MCFARLAND: What about clothes?

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

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

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

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

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

23 MR. LEWIS: No, kept confidential.

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

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

4 MR. LEWIS: Absolutely.

5 MR. SEXTON: Why?

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

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

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

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

20 MR. LEWIS: All the time.

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

22 correctional officers are considered peace officers

23 in California?

24 MR. LEWIS: That is correct.

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

1 start the chain of custody yourself?

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

12 MR. SEXTON: Thank you.

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

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

20 We are transporting in the manner in which he is

21 upon removal from the cell.

22 MR. MCFARLAND: What about the unions

23 involved in the process, is a union representative

24 appointed to be the accused?

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

1 MR. MCFARLAND: If it is staff.

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

3 I would say no.

4 MR. MCFARLAND: Do they have the right to

5 ask for one?

6 MR. LEWIS: Certainly, they do.

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

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

9 to refuse to represent them or not, especially in

10 regards to a potential felony. I just know they

11 would be afforded an opportunity to have a union

12 representative present.

13 MR. MCFARLAND: Do you know whether the

14 same union representative would be used for both the

15 accused and witnesses to the assault?

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

17 what the union protocols are.

18 MR. SEXTON: Is California a Police

19 Officers' Bill of Rights state?

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

21 Rights.

22 MR. SEXTON: You do have a Police

23 Officers' Bill of Rights?

24 MR. LEWIS: Yes.

25 MR. MCFARLAND: Does that mean that they

1 have a right to a union representative?

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

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

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

19 MR. MCFARLAND: So what form is necessary

20 for the prisoner to use to see a mental health

21 counselor?

22 MR. LEWIS: Inmate ducat requiring medical

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

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

25 MR. MCFARLAND: Do you know if a prisoner

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

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

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

13 MR. LEWIS: More than likely.

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

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

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

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

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

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

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

7 MR. LEWIS: Correct. For security.

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

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

15 MR. MCFARLAND: What should the procedure

16 --

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

19 MS. ELLIS: With the training, how long

20 does this training last? Did you mention that?

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

22 blocks.

23 MS. ELLIS: Four-block?

24 MR. LEWIS: Yes.

25 MS. ELLIS: Interactive?

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

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

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

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

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

21 form or test.

22 MS. ELLIS: Where would I find information

23 to help me understand the qualifications for

24 becoming a staff person in corrections?

25 MR. LEWIS: To be a correctional officer?

1 MS. ELLIS: Yes.

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

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

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

12 I'm sorry.

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

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

17 MS. VILES: Correctional officer.

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