

20 community, and it seems there is no reason the same

21 change can't occur in the prison environment.

22 Thank you.

23 MR. MCFARLAND: Thank you very much, Mr.

24 Specter. Your seven suggestions were adequate

25 procedures, staff must be trained, staff must be

1 educated on reporting, guaranteed confidentiality.

2 What was the next one?

3 MR. SPECTER: Staff must be educated about  
4 the harm caused by sexual violence, reporting  
5 mechanisms and their obligations about what to do  
6 when there is a report. They must be a reporting  
7 system that guarantees confidentiality.

8 I forgot to mention that there must be an  
9 adequate investigation process. Prisons must have  
10 an effective classification system and a safe place  
11 to house potential victims, appropriate line of  
12 sight supervision and an end to overcrowding.

13 MR. MCFARLAND: Can we get the hard copy  
14 of your remarks?

15 MR. SPECTER: If you don't mind some blue  
16 pens.

17 MR. MCFARLAND: That makes it more  
18 authentic. You get more money on the street for the  
19 actual.

20                   MR. SEXTON: Mr. Specter, the question of  
21 confidentiality keeps coming up, and I am not  
22 familiar with California law by any means. But how  
23 do you maintain confidentiality when the allegation  
24 is made against the staff member, that it will lead  
25 to an administrative hearing as well as possible

1 criminal action or criminal action? How do you  
2 protect that confidentiality?

3 MR. SPECTER: I think maybe Mr. Gennaco is  
4 better off answering it. In our experience the  
5 first thing that has to happen is they have to be  
6 able to report the incident without everybody seeing  
7 it in the prison. So, I mean, that is the first  
8 thing.

9 The second thing, everybody knows that if the  
10 case is criminal, there will have to be disclosure.  
11 But that is later and also after you have had an  
12 opportunity to put the victim in a safer place.  
13 Also what has to happen later, the investigative  
14 process has to be professional so that the  
15 disclosure isn't done until the victim is  
16 comfortable with it and they are safe and it is done  
17 at a later point when you gathered all the other  
18 kind of evidence that you may need to determine  
19 whether that the sexual assault occurred. It can be

20 done. I've seen it done. You have to be sensitive

21 and careful.

22 MR. MCFARLAND: Lt. Alvey, you have heard

23 the testimony of these two professionals. Anything

24 jump out at you that you would want to either affirm

25 or take a different tack on? I am not asking you to

1 critique or rubber stamp anything they said.

2 Anything that just kind of jumped out at you that  
3 you want to comment on?

4 MR. ALVEY: No.

5 MR. SEXTON: If I may be reviewing Lt.  
6 Alvey's book, they're triple crown winners for  
7 accreditation of law enforcement for their jail and  
8 medical service. You have adopted the, I think,  
9 four latest standards of ACA in here regarding PREA?

10 MR. ALVEY: Yes.

11 MR. SEXTON: They are enclosed in his  
12 submitted testimony.

13 MR. ALVEY: I would like to take the  
14 opportunity on behalf of Sheriff Plummer, Under  
15 Sheriff Lucia, I would like to thank the panel for  
16 the opportunity to participate in this testimony.

17 MR. SEXTON: How many -- there was a  
18 question that came up yesterday. I am going to ask  
19 this of Mr. Gennaco also, but in regard to housing

20 of suspects that come into your county jail. I am  
21 assuming your facility is 80-some percent pretrial?

22 MR. ALVEY: The statistics are actually in  
23 the book. We are probably a little less than that.

24 MR. SEXTON: Majority pretrial?

25 MR. ALVEY: Majority are pretrial.

1                   MR. SEXTON: How many folks come into your  
2 facility and identify themselves as gay or  
3 transsexual and do they receive any different  
4 treatment once they've identified themselves in  
5 regard to housing?

6                   MR. ALVEY: Identified? If they identify  
7 themselves as homosexual, then they will be  
8 classified to protective custody, ordinarily. If  
9 there are other issues, it makes it a classified --  
10 one we call dual classification. If they come in  
11 homosexual, they go to administrative segregation.  
12 We have approximately -- I don't have the exact  
13 figure -- about 100 inmates on average at this given  
14 time classified as homosexual, 2 percent of our  
15 population.

16                   MR. SEXTON: When they go administrative  
17 seg, is that lockdown?

18                   MR. ALVEY: Yes.

19                   MR. MCFARLAND: I am a little confused.



20 If they self-identify as homosexual, they go to ag

21 seg?

22 MR. ALVEY: No.

23 MR. MCFARLAND: Protective custody?

24 MR. ALVEY: Initially they are in

25 protective custody. They have what I call, what we

1 call dual classification. That happens to other  
2 classifications also. They are protective custody  
3 and mental, they will be in ad seg. It's hard to  
4 have a special house within a special house.

5 MR. MCFARLAND: What form does the  
6 protective custody take without a mental  
7 classification or any other dual?

8 MR. ALVEY: Protective custody house is  
9 just what we call special handling house. Depending  
10 on their classification, they're medium, mental or  
11 minimum and maximum security. There will be open  
12 dorms for minimum, and medium and maximum security  
13 will be two man cell. They won't be kept from each  
14 other. They will be let out together, so forth,  
15 interaction.

16 MR. MCFARLAND: This is something like  
17 sensitive needs unit in the prison context?

18 MR. ALVEY: I am not familiar with that  
19 term.

20 MR. SEXTON: First, I see your population  
21 is down to 18,000. I heard it was up to 23,000.

22 MR. GENNACO: I was being conservative.  
23 It goes up and down.

24 MR. SEXTON: It was 23,000 last time I was  
25 out to visit you. Can you explain what K11 is? We

1 were told about that yesterday.

2 MR. GENNACO: K11 is a designation given  
3 to, as my panel member indicated, whenever an inmate  
4 who is coming into the system in Los Angeles County  
5 self-identifies as homosexual or transsexual, he  
6 will be assigned to the K11 housing area. It is  
7 some dormitory housing, some single person cells,  
8 some dual man cells. But they are segregated from  
9 the rest of the jail population.

10 This is an issue that is under some  
11 controversy or media review currently in Southern  
12 California, by the way. There was recently a murder  
13 in Orange County and in the Orange County system  
14 they do not, although they used to, they do not  
15 anymore segregate out individuals who come into the  
16 system who claim they are homosexuals.

17 MR. MCFARLAND: Was the murder victim  
18 homosexual?

19 MR. GENNACO: Yes.

20 MR. SEXTON: Can you explain one other  
21 thing for me? Again we don't have it in Alabama,  
22 but I understand you have here in regards to  
23 Internal Affairs investigations, Police Officers  
24 Bill of Rights can be evoked by any peace officer  
25 who is under investigation.

1 MR. GENNACO: That is correct.

2 MR. SEXTON: Can you explain how this  
3 would come to play in an Internal Affairs  
4 investigation?

5 MR. GENNACO: Yes. One thing we have  
6 tried to get the Department to do, and they have  
7 agreed to do this in large part, particularly with  
8 regard to critical incidents, like suicides and  
9 homicides and other significant assaults in the  
10 jails, is to not only look at the perpetrator, which  
11 is an inmate, but also to look at it from a more  
12 holistic view, and if there are performance or  
13 accountability issues that involve potential  
14 violation of policy, for example, a deputy who does  
15 not perform his mandated Title XV safety checks,  
16 then we ask the Department to look at those  
17 performance issues through the prism of  
18 administrator Internal Affairs investigation.

19 When an Internal Affairs investigation is

20 launched, peace officer's Bill of Rights here in  
21 California provides a lot of protections to peace  
22 officers with regard to the way in which those  
23 investigations needs to be carried out. So, for  
24 example, under the peace officer's Bill of Rights  
25 before you are allowed to interview a subject of the

1 investigation, he or she has a right to have a  
2 District Attorney or representative present during  
3 those interviews. The interviews have to be  
4 conducted with notice. There have to be certain  
5 kinds of other provisions, as tape-recording of the  
6 interview has to be conducted. There is a minimum  
7 of two interviewers that can conduct the  
8 investigation.

9           So there is a whole host and litany of  
10 protections that are afforded staff when an Internal  
11 Affairs investigation is --

12                   MR. SEXTON: Does it also Garity Warning?

13                   MR. GENNACO: Yes. If you are doing an  
14 Internal Affairs investigation, you will probably be  
15 required to compel the subject before the subject  
16 would agree to talk to you, before any ability to  
17 use any information in an Internal Affairs  
18 investigation for criminal prosecution would  
19 probably be precluded.



20 MR. MCFARLAND: Just explain for some of

21 us what a Garity, G-a-r-i-t-y, is.

22 MR. GENNACO: It comes out of a case, I

23 believe, that was decided by Justice Douglas way

24 back when in the '60s. But essentially -- and the

25 majority did agree with him on the Supreme Court.

1 Essentially, what it says is that if you are public  
2 employer you are entitled to information about what  
3 has transpired, you are entitled to be able to  
4 interview your employees regarding any allegations  
5 of misconduct. However, if you do so in  
6 administrative setting, what the Supreme Court has  
7 said is that you can't then turn around and use the  
8 information you get from the employee in a criminal  
9 case because to do so would be violation of the  
10 Fifth Amendment right not to incriminate themselves.

11           If you go down the path of administrative  
12 investigation, generally any attorney representing  
13 the employee will demand that you give that Garity  
14 warning in saying that I am ordering you to talk to  
15 me.

16           MR. SEXTON: The Police Officer's Bill of  
17 Rights, would it also -- as long as they are a peace  
18 officer, would that have, in any way play into a  
19 criminal investigation? Is there anything that --

20 is the Police Officers Bill of Rights just for civil

21 or internal?

22 MR. GENNACO: It has to do with

23 administrative investigations. The Peace Officers

24 Bill of Rights has no applicability to criminal

25 cases. But staff deputies and unsworn staff can all

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1     invoke the Fifth Amendment right when, in fact,  
2     there is a criminal investigation going on.  What  
3     often happens is that the sheriff's departments if  
4     there is any potential criminality of staff members,  
5     the criminal investigation will take precedence and  
6     the deputy or the staff member will have an option  
7     whether to provide a voluntary statement to those  
8     criminal investigators.  They may decide not to do  
9     that.

10             In many cases they do decide not to do that.

11     In which case you use what information you have  
12     outside of that statement that you may not get from  
13     staff and try to develop the case best you can.  
14     Then what happens, that information is presented to  
15     the District Attorney.  The District Attorney makes  
16     a decision.  If the decision is to decline the case,  
17     it is usually then when the administrative  
18     investigation actually kicks in.

19             MR. SEXTON:  To your knowledge, how many

20 law enforcement agencies have offices of independent

21 review?

22 MR. GENNACO: None. And almost no jails

23 or prison groups in particular have any real kind of

24 oversight. There is some oversight with the IG's

25 office on the federal side. I am pleased to say in

1 California, as a result of some of the work that was  
2 forced upon the Department in some way by Don  
3 Specter and his group, there is now being created a  
4 Bureau of Independent Review. The Bureau of  
5 Independent Review is an oversight group that was  
6 patterned after our group down in Los Angeles County  
7 and will be working to ensure effective internal  
8 investigations of staff misconduct for the statewide  
9 California Department of Corrections and  
10 Rehabilitation.

11 MR. SEXTON: Do you have the ability, if a  
12 civil case arises, do you have the ability to,  
13 during your investigation, to settle out with the  
14 other attorney? Does that fall over to you?

15 MR. GENNACO: The civil litigation goes in  
16 its own direction, and it is defended by attorneys  
17 apart from us. But one thing that I think many  
18 departments don't do, unfortunately, is they figure  
19 that civil litigation, the lawyers are going to deal

20 with that. They don't learn from what has gone on  
21 in the civil case to help address either  
22 individually or systemically issues that are coming  
23 out of that civil case.

24           So what we try to do is learn about those  
25 civil cases and provide that feedback back to the

1 Department and say, "Look, you just paid \$600,000  
2 here. Something went wrong in the jails. Let's try  
3 to figure out what went wrong in the jails rather  
4 than paying the money and moving on to the next  
5 crisis."

6 MR. MCFARLAND: Mr. Gennaco, why would  
7 folks with outstanding traffic tickets be placed in  
8 the presence of lifers in your facility?

9 MR. GENNACO: The reason is because they  
10 are almost -- the jail is virtually full these days  
11 with lifers. The idea, there are very few, very,  
12 very few minimal security or nonviolent offenders  
13 currently housed in Los Angeles County jails. I  
14 would say in the single digits. That in some ways  
15 is good for nonviolent offenders. They are diverted  
16 out and not housed in custody. On the other hand,  
17 for the few that do remain it presents a very  
18 significant imbalance between the violent and the  
19 nonviolent offenders.



20           Unfortunately, in the county jails there is  
21 not enough room to house individually nonviolent  
22 offenders. The other problem that we have seen is  
23 going back to the classification issue. Those are  
24 critical decisions that are made on a daily basis,  
25 if not several times a day, with regard to inmates

1 with whom they are going to be housed with. Because  
2 the majority of the inmates are housed in a multi  
3 person facility it is critical those decisions be  
4 made carefully.

5           Recently the Sheriff's Department -- two years  
6 ago I would have had to report to you that the  
7 Sheriff's Department in making those classification  
8 decisions largely left the decisions about housing  
9 up to the individual senior deputy of the day at a  
10 particular dormitory. And they were just based on  
11 whatever beds that he or she had available. Those  
12 beds were going to be filled with whoever came in on  
13 the bus. Today, as a result of some of the violence  
14 that has occurred as a result of, I think,  
15 unprincipled decision-making, there is now a central  
16 classified housing unit that is responsible for  
17 those decisions.

18           Is it fixed? No. Is it better? Yes. But we  
19 continually see that decisions that have been made

20 that were not made based on all the information  
21 available to the jail authorities result in  
22 tragedies, result in murders, result in jail rapes.  
23 Those kind of decisions need to be important,  
24 important critical decisions to this whole issue, I  
25 believe.

1           I think that, for example, the North Point  
2   System, which you may have heard testimony about, is  
3   the major, most progressive classification system  
4   that exists. It sort of decides security levels of  
5   inmates based on criminal history and other things.  
6   In my view, the North Point System doesn't go far  
7   enough.

8           For example, Don was talking about the  
9   particular vulnerability of young people in jails or  
10  in the prisons. In the jails what we find is there  
11  is a particular vulnerability of older --

12           MR. SEXTON: I think you may have gone on  
13  something on the North Point classification.

14           MR. MCFARLAND: I am not familiar with it.

15           MR. SEXTON: You are not familiar with it?

16           MR. MCFARLAND: No.

17           MR. GENNACO: The North Point System is a  
18  system that was developed, adopted by a lot of jails  
19  that is used as a guide in decision making, decision

20 tree guide that sort of -- that what you do is you  
21 get intake from the inmates, and based on that  
22 intake and your independent research, criminal  
23 history and et cetera, et cetera, that comes in with  
24 the intake, each inmate gets a number. That number  
25 goes from one to nine, nine being the most violent,

1 the most susceptible of being violent in custody.

2 Then what you're supposed to do with that  
3 information, to use the number to classify people  
4 and house them in appropriate areas in the jails  
5 that you have available. But as said, the North  
6 Point System doesn't take into consideration certain  
7 characteristics that I think also need to be  
8 considered, such as age of the inmate.

9 We had three or four murders recently where  
10 older inmates have been killed and I think probably  
11 sexually abused in other cases that have not been  
12 reported because of the fact that older inmates are  
13 less likely or less able to defend themselves.

14 MR. MCFARLAND: What other factors do you  
15 think the North Point System should add to the list?

16 MR. GENNACO: Well, one thing that I  
17 think, by and large, it is a pretty good system. It  
18 needs to be tweaked a little bit and characteristics  
19 unique to individuals need to be considered. For

20 example, if the inmate is in a situation where he is  
21 cooperating with authorities, he is going to be more  
22 vulnerable to all kinds of violent attacks. If that  
23 information is made known and through housing  
24 decisions and keep away status, those kinds of  
25 inmates need to be specially housed.

1                   MR. MCFARLAND: Inferably, the North Point  
2 status doesn't consider whether the person is a  
3 snitch?

4                   MR. GENNACO: No. That doesn't mean that  
5 jails don't consider it or prisons don't consider  
6 it. It is just not built into the North Point  
7 System.

8                   MR. MCFARLAND: How about sexual  
9 orientation, apparent or real?

10                  MR. GENNACO: I don't think that sexual  
11 orientation also is included. Although, again, most  
12 jails in my view, in California at least, segregate  
13 based on reporting of homosexuality. Orange County  
14 is the exception.

15                  MR. MCFARLAND: Self-reporting?

16                  MR. GENNACO: Yes.

17                  MR. SEXTON: Lt. Alvey, would you have or,  
18 Mr. Gennaco, you can answer this, when you have  
19 information regarding threats, sexual orientation,



20 so on and so forth, that you are even cooperating  
21 with the authorities, do you have that individual,  
22 once they are sentenced and they go to the state, is  
23 that information passed on to the state?

24 MR. ALVEY: If we have inmates who have  
25 been problems to us or we believe is going to be a

1 problem to the state prison, we do pass that  
2 information on.

3 MR. SEXTON: Do they accept the  
4 information?

5 MR. GENNACO: Oh, yeah.

6 MR. SEXTON: Do they ask you for that type  
7 of information?

8 MR. GENNACO: They don't solicit it. We  
9 just provide it.

10 MR. MCFARLAND: What kind of information  
11 might be included in that?

12 MR. ALVEY: An inmate assault towards  
13 staff, assault towards other inmates.

14 MR. MCFARLAND: How about if he has been  
15 assaulted, would you pass that on to the prison?

16 MR. ALVEY: Probably not as a rule.

17 MR. SEXTON: Would it be part of his  
18 medical reports?

19 MR. ALVEY: Yes.

20 MR. MCFARLAND: Medical records go from

21 your facility to the prison?

22 MR. ALVEY: I don't believe we --

23 MR. SPECTER: No, they don't. Prison

24 systems get -- if they are lucky, they get a piece

25 of paper, a summary of the diagnosis and

1 prescription medication for the records.

2 MR. MCFARLAND: Would you agree with that,  
3 Lt. Alvey? Do you know?

4 MR. ALVEY: Not entirely. They refuse  
5 inmates for medical reasons.

6 MR. MCFARLAND: CDCR refused some of your  
7 inmates?

8 MR. ALVEY: Number one, tuberculosis  
9 testing. They won't take anybody who hasn't had a  
10 recent TB test. We provide that information.

11 MR. SEXTON: Mr. Specter, why would they  
12 not take it?

13 MR. SPECTER: I think there is a  
14 confusion. I just said that the prison system  
15 doesn't get the medical chart for the jail inmate.  
16 They get a summary of what medications the prisoner  
17 is on if they are lucky. I wasn't talking about  
18 whether they --

19 MR. SEXTON: Why do they not get the

20 medical?

21 MR. SPECTER: Why?

22 MR. SEXTON: Yes, sir.

23 MR. SPECTER: We have been suggesting that

24 they do for years, something that would be more --

25 MR. SEXTON: You may want to tell me. We

1 are at the bottom of everything. We are considered  
2 the bottom of everything. We give them the medical  
3 charts; we give them medical reports.

4 MR. SPECTER: In fact, we had to get a  
5 court order for them to get even a summary of the  
6 medications that the prisons were on, from the jail  
7 to the prison. Big problem.

8 MR. MCFARLAND: Does that comport with  
9 your understanding, Lieutenant?

10 MR. ALVEY: I couldn't tell you exactly  
11 what we provide. I know we provide some  
12 information.

13 MR. SPECTER: It differs by county.

14 MR. MCFARLAND: Mr. Gennaco, do you know  
15 what L.A. County, the sheriff, provides to CDCR?

16 MR. GENNACO: I think it is as Don  
17 suggested, a summary of the medical history. I do  
18 think that if there are -- my understanding is if  
19 there have been issues in the jail that the state

20 authority ought to know about it with regard to  
21 either violence or acting out behavior on behalf of  
22 inmates, that will be provided.

23 MR. SEXTON: Would that kind of  
24 information help reduce the violence between the  
25 county jail and the state prison?





20 that be germane to CDCR?

21 MR. GENNACO: It is a good question. As I

22 said, principles of just good police work would

23 suggest that information should be provided and

24 accepted.

25 MR. SEXTON: Would a consideration

1 possibly against it -- I am just trying -- on any  
2 given day you're probably moving several hundred. I  
3 am assuming that by the time you try to chase down  
4 medical records, make copies, so on and so forth,  
5 that may be their rhyme or reason.

6 MR. GENNACO: It could be an inhibitor. I  
7 think that would be an argument that might be  
8 articulated. One thing that may end up being  
9 helpful, has been helpful in the county jail with  
10 regard to the medical information being available at  
11 different facilities, is county jail has moved, is  
12 moving if not has moved, to a paperless sort of  
13 medical history way of documenting, medical history  
14 electronically. It is much more easy to transfer  
15 that information from facility to facility than it  
16 used to be when the paper would often never follow  
17 the inmate when he was put into a new assignment or  
18 if it followed, it would be days before it would get  
19 there.

20 MR. SEXTON: If DOC is in a position to be

21 able to receive that information?

22 MR. SPECTER: Absolutely not.

23 MR. SEXTON: That would be the next

24 question.

25 Mr. Gennaco --

1 MR. GENNACO: But they could.

2 MR. SPECTER: We hope they would.

3 MR. SEXTON: I understand that.

4 Next time somebody knocks Alabama, I may have  
5 to point out this way.

6 Los Angeles, as I understand, also took a lead  
7 in mental health facility, as you talk about mental  
8 health. I have toured your mental health facility.  
9 Could you talk some about that and if that has  
10 reduced violence in the facilities?

11 MR. GENNACO: It's interesting that you  
12 ask me about that since we just had a death in one  
13 of the mental health dormitories, as a result of an  
14 inmate murder last week.

15 MR. SEXTON: I don't read the papers.

16 MR. GENNACO: That being said, I would say  
17 a few things. One is the Twin Towers facility is a  
18 very modern facility, and, as I think health care  
19 goes, mental health care goes in a jail facility, it

20 is probably one of the better ones. It is  
21 unfortunate that in the United States it happens to  
22 be the largest mental health care institutionalized  
23 facility in the country. It is a jail.

24 That also being said, I do think that in  
25 comparison to other mental health jails or prisons

1 that I am aware of it probably stands out as being  
2 one of the better ones as far as providing a good  
3 level of mental health care. It does have  
4 challenges. One of the challenges, for example,  
5 that I think the mental health professionals and  
6 deputies in that facility face every day is that  
7 they have to make an arbitrary figure, they have a  
8 hundred beds for one type of mental inmate who needs  
9 some sort of mental health care. They will always  
10 have 100 beds. So they fill the 100 beds with  
11 inmates who are there right now, who they think are  
12 the most in need of this kind of intense mental  
13 health treatment. The hundred and first inmate  
14 comes into the facility who is worse than those  
15 hundred, so number 100 has to go somewhere else.  
16 That is always a continual problem because of the  
17 fact there is no maneuverability because of the  
18 population that should allow empty beds. So the  
19 principal decision could be made. The decisions are

20 made on what we have available right now.

21 MR. SEXTON: I understand the bubble. Has  
22 it helped reduce your prison rape situation,  
23 especially with those mentally impaired?

24 MR. GENNACO: I think that segregating out  
25 those that are deserving and need of mental health

1 is probably causing a reduction in a number of ways.  
2 One is it provides a level of mental health care  
3 that will reduce the likelihood of assailants  
4 assailing, and I also think having mental health  
5 care professionals in the jails and working with  
6 these inmates provides reporting mechanisms that  
7 otherwise wouldn't exist with regard to actual  
8 incidents.

9 MR. MCFARLAND: Do you have such  
10 counselors, mental health counselors?

11 MR. GENNACO: In the jail, the Department  
12 of Mental Health has a number of personnel on staff  
13 at any particular time.

14 MR. MCFARLAND: Lt. Alvey, do you have  
15 mental health counselors at your facilities?

16 MR. GENNACO: We have a housing unit  
17 called Behavior Health Unit. Our criminal justice  
18 mental health personnel staff it. They treat  
19 inmates that are housed there.



20 MR. SEXTON: That type is required by ACA

21 accreditation; that is required?

22 MR. ALVEY: Yes. We do have a facility

23 out of jail where we take acute inmates.

24 MS. ELLIS: Mr. Specter.

25 MR. SPECTER: Yes, ma'am.

1                   MR. ELLIS: Certainly for both of you, you  
2 both talked about culture changing attitudes, talked  
3 about insensitivity.

4                   Mr. Gennaco, you talked also about the outside  
5 community. I am wondering if you could comment and  
6 talk a little bit about perceptions that people have  
7 regarding how inmates are held in low esteem by  
8 prison personnel. I know that it's difficult to  
9 change attitudes, and I'm just throwing out there  
10 may be perceptions. Would both of you comment a  
11 little bit on that subject?

12                   MR. SPECTER: Sure. Before I do, I don't  
13 -- I want to make sure that my comments are not  
14 taken the wrong way. There are 35,000 staff members  
15 working --

16                   MS. STILL: 56,000.

17                   MR. SPECTER: We will take your word.

18                   MS. STILL: I swore before I talked.

19                   MS. ELLIS: Exactly.

20                   MR. SPECTER:  There are 56,000 officers,  
21  including some sitting behind me, and not all of  
22  them act in the same way.  Just like I like to say  
23  the prisoners are a microcosm of the community, and  
24  so are the staff.  But, in general, we have seen the  
25  range of -- a wide range of unacceptable behavior by

1 officers in terms of treatment of prisoners. Some  
2 of them are very respectful of prisoners and talk to  
3 them and treat them like human beings. Others treat  
4 them like numbers. Others still believe that they  
5 are part of the punishment that is going to occur  
6 when the prisoner is incarcerated. And it is their  
7 job to make life miserable for the prisoner while he  
8 is incarcerated, which, of course, is not the law.  
9 And it is very difficult and it is also very much of  
10 a cop kind of mentality they give themselves, view  
11 themselves as cop against the bad guys.

12           And there has been some effort by one of the  
13 former secretaries of the department to kind of get  
14 over the notion that they are prisoners, but they  
15 are always our clients/customers/patients. Like  
16 when you think about it, the prison officials and  
17 officers are there to provide services to prisoners.  
18 They are to provide them food, clothing, keep them  
19 safe. And to get officers to think of the prisoners

20 in that way has not really been successful. Met  
21 with a lot of resistance, which tells you a lot  
22 about what the culture is there. And the problem of  
23 sexual abuse that occurs, the problem of taunting  
24 people of their sexual orientation because they have  
25 been subject of sexual abuse because they are

1   mentally ill is something that in any kind of  
2   correctional system also has to be guarded against  
3   and continually works out because it's always going  
4   to be present.

5           In California they have no capacity to really  
6   do that.  There is a very short training period and  
7   then they go through the academy and then the new  
8   recruits are immersed in whatever culture that  
9   exists at that time.  That is one of the main areas  
10  of opportunity which hasn't been utilized as to  
11  really train the heck out of these people before  
12  they --

13           MR. MCFARLAND:  Mr. Specter, has your  
14  organization had a chance or been authorized to have  
15  an opportunity to review any of the implementation  
16  materials for either state or federal PREA statute?

17           MR. SPECTER:  You know, they don't ask our  
18  opinion of anything unless the court makes them do  
19  that.  Even then it's touch and go.  So the answer

20 is no. Although we have actually sent former  
21 director or secretary of the state responses in that  
22 case that I mentioned about the women who was  
23 sexually assaulted a long letter with a lot of  
24 material explaining what we think needs to be done  
25 to prevent that. We, of course, got no response.

1 MS. ELLIS: Would you like to comment on  
2 that?

3 MR. GENNACO: I won't repeat what  
4 Mr. Specter said. Just to give you maybe a little  
5 bit of different perspective. I agree that I also  
6 don't want anything that I say taken out of context.  
7 The vast majority of people for Los Angeles County  
8 Sheriff's Department are good will and are there for  
9 good reasons and doing a good job every day. That  
10 being said, so long as law enforcement agencies have  
11 to hire from the human race, you are going to have  
12 issues with some particular employees.

13 The other thing that I think compounds the  
14 situation at central jail is that the environment in  
15 which the deputies work, in which the inmates are  
16 housed is a dismal environment for both, and is an  
17 unsafe environment for both. And I think because of  
18 that that impacts the dynamics and relationship  
19 between staff and inmates because it is so dismal



20 because it is so antiquated and because it is very  
21 difficult to do your job and feel safe while you are  
22 doing your job and because hundreds, if not  
23 thousands, of weapons are recovered, handmade  
24 weapons are recovered on an annual basis from the  
25 jails in the inmate housing areas, and because

1 inmates have the ability not only to commit violence  
2 but to manufacture alcohol pretty much at will,  
3 which also exacerbates the violence and  
4 decision-making by inmates.

5 All of those reasons, I think, contribute to  
6 what might not be the best or optimum relationship  
7 between the staff and inmates. They are all in a  
8 bad situation is what I'm trying to say. One thing  
9 that can help is to increase the level of  
10 supervision, and the more supervision you have in  
11 this environment by sergeants and people who are  
12 walking the floor ensuring the deputies are doing  
13 the job, the better off you are going to be.

14 The second thing that the Department is doing  
15 more of, and I think as a result of some of our  
16 urging, is not only to look at policy violations  
17 that are willful, because those are the vast  
18 majority of them, but also to look at policies and  
19 violations that involve negligent behavior. People

20 that are asleep at the switch. People not doing the  
21 jobs. People saying they are doing row checks and  
22 they are not doing that. Falsifying records. That  
23 kind of inquiry needs to be done on a regular basis  
24 so that the jail can continue to be performing at a  
25 professional level, and that is also important.

1 MS. ELLIS: Thank you.

2 Mr. Alvey, are there individuals working in  
3 the prison system, perhaps guards, who themselves  
4 may be members of the LGBT community or population?

5 MR. ALVEY: LGBT?

6 MR. MCFARLAND: Lesbian, gay, bisexual,  
7 transgender.

8 MR. ALVEY: Yes, absolutely I have some of  
9 them working for me.

10 MR. ELLIS: Are these helpful in making  
11 suggestions or being somewhat supportive to the  
12 special needs that that individual inmate may have?

13 MR. ALVEY: I haven't seen that. I have  
14 seen them professional. They do the job that they  
15 are supposed to do. They may be more understanding  
16 of some needs than most other people, but I haven't  
17 seen anything special, no.

18 MR. ELLIS: Would there be any reason or  
19 have you ever observed or become aware that perhaps

20 inmates of that common population might gravitate

21 towards those individuals?

22 MR. ALVEY: I would say, no. Mostly

23 because they are not open about it. Most of them

24 just come to work, do their job.

25 MR. ELLIS: Thank you.



20 brought against one of the prisons where there was a  
21 lot of guard brutality, the judge found that  
22 investigative process at that prison was, quote, a  
23 farce and a sham. And it was like that because  
24 nobody had paid attention to it, no outside agency  
25 had paid attention to it for many years, and there

1 was lack of external oversight.

2 I believe that unless there is continual and  
3 constant external oversight in-house investigations  
4 will fall down to their natural level.

5 MR. GENNACO: I am an advocate of the  
6 pairing that occurs in Los Angeles County regarding  
7 internal investigations of staff. And what I like  
8 is to have Internal Affairs investigators do  
9 investigative work, but on day-to-day work we are  
10 monitoring, overseeing its investigation as a help  
11 to shape those investigations, to make sure that the  
12 work that is being done by Internal Affairs is a  
13 thorough and fair objective product in which all  
14 leads will be pursued, and before that investigation  
15 moves onto the decision maker we review it to make  
16 sure that it meets our criteria. And I think the  
17 advantage of doing that and instead of totally  
18 farming that out to an outside group, Internal  
19 Affairs people have worked the jails. They know the



20 system. They know where the bodies are buried, if  
21 you will. Not to make a pun of it. But they know  
22 the ins and outs of deputy behavior. That expertise  
23 is helpful to us in getting to the bottom of what  
24 happened.

25 I agree with Don that you need a check from an

1 oversight group that doesn't have any investment in  
2 how the conclusion or decision is going to be  
3 reached to help ensure that it is a principal  
4 investigation and a thorough investigation and as  
5 well as a decision-making at the administrative end.  
6 That needs to have some participation from outside  
7 voices as well in order to do that.

8           The other thing it does is, even if you assume  
9 that law enforcement agencies have the purest heart  
10 and is doing the best it can with regard to these  
11 internal investigations, there are going to be  
12 members of the community, including the inmate  
13 community, that if it is just left to them, they are  
14 not going to believe it. So some of it has to do  
15 with confidence in the investigation, and I think  
16 you increase the confidence in that community if  
17 there is an outside participant in these  
18 investigations.

19           MR. SEXTON: Any question, if you were, I

20 guess, sitting here, would one of your  
21 considerations be outside, there are not many LASOs  
22 in the country and there are not many Lee Baccha's  
23 in the country. Would it be advantageous to discuss  
24 for us outside review? I can understand clearly  
25 your consideration in a jail, to take a street

1 officer and put him in a jail environment, he would  
2 be totally lost. Another sheriff's office to  
3 investigate that or somebody that has an expertise.  
4 But my question comes up as I listen to testimony  
5 and that very few sexual assaults are taking place  
6 in our jails. Then we have, or prison, where we  
7 have folks that are investigating sexual assaults  
8 that actually is an expertise in itself. As I am  
9 listening to this, I am curious to know having folks  
10 with sexual or rape investigative experience  
11 actually investigate a sexual crime versus somebody,  
12 that I am hearing, not many occur, do they have  
13 expertise in-house to do so.

14 My question: Is this something we ought to  
15 consider, outside investigations?

16 MR. GENNACO: I would say, yes, consider  
17 it.

18 MR. MCFARLAND: Lt. Alvey, could we get a  
19 copy of the Policy and Procedures 13.07, sexual

20 assault protocol for victims?

21 MR. ALVEY: It's in the binder.

22 MR. SEXTON: That is one of ACA standards.

23 It's the last one.

24 MR. MCFARLAND: It is. Thank you.

25 Lt. Alvey, are your personnel union members?

1 MR. ALVEY: Yes, they are.

2 MR. MCFARLAND: Is that the CCPOIT?

3 MR. ALVEY: No, we are local Deputy  
4 Sheriff's Association.

5 MR. MCFARLAND: In looking at Policy and  
6 Procedures 13.07, Section (B)(12) says: after the  
7 victim returns from the rape kit, isolate the inmate  
8 until classification arrangements for housing be  
9 assigned, either in protective custody or another  
10 housing be arranged.

11 Would that include -- would another housing  
12 area include ad seg or no?

13 MR. ALVEY: We would try not to house him  
14 in ad seg. Ad seg is not a very desirable place.  
15 The person, the victim, didn't put themselves in the  
16 situation, so it would be punishing the victim.

17 MR. MCFARLAND: Where does the alleged  
18 assailant get housed after?

19 MR. ALVEY: Probably ad seg, most

20 assuredly.

21 MR. MCFARLAND: Where would that be

22 indicated in the policy?

23 MR. ALVEY: That is not in that. There is

24 victim policy.

25 MR. MCFARLAND: There is a Section C,

1     assuring the assailant, would it not address what  
2     would happen to the assailant, Page 3 of 6?

3                   MR. ALVEY:  No.  That is not going to  
4     address that.  There is a reclassification section  
5     policy also attached in the folder.  Probably in  
6     that.  The inmate would be moved, isolated from  
7     other inmates.

8                   MR. MCFARLAND:  Are they routinely  
9     prosecuting criminally?

10                  MR. ALVEY:  We submit everyone for  
11     consideration for prosecution regardless of the  
12     victim's desire.

13                  MR. MCFARLAND:  We've heard a lot of  
14     witnesses that DAs were in the past less than --  
15     they didn't always prosecute.  What has been your  
16     experience?

17                  MR. ALVEY:  Given the short notice, I  
18     wasn't able to follow up on the statistics.  I did  
19     get some statistics.  I know we sent everyone to the



20 District Attorney's office. Our investigation unit,  
21 our patrol section investigates all sexual assaults.  
22 So I would be willing to venture everyone was  
23 charged. I can get the statistics.

24 MR. MCFARLAND: If possible, that would be  
25 helpful if you can supply that to us, just the

1 percentage of charged and percentage of convictions.

2 I imagine the charges would be dropped.

3 MR. SEXTON: Mr. Specter, in your  
4 knowledge, statewide cases of violence taken, not  
5 only sexual violence, those other types of violence  
6 brought before District Attorneys for prosecution,  
7 are they followed up on?

8 MR. SPECTER: I think -- well, I am sure  
9 that all felonies are referred to the District  
10 Attorneys for prosecution. Historically, very few  
11 are prosecuted. Many of them are not charged, what  
12 they call administrative reasons. Serious, but that  
13 is not to say there are not criminal charges  
14 brought. There are criminal charges brought, but  
15 the vast majority are not prosecuted.

16 MR. SEXTON: In your opinion, why not?

17 MR. SPECTER: A lot of them involve  
18 relatively minor, like if you touch -- if you are a  
19 prisoner and you hit a correctional officer or touch

20 him or something or battery on another prisoner,

21 that is a felony.

22 MR. SEXTON: How about if we go up on the

23 same balance, same rationale of sexual assault,

24 would they be prosecuted?

25 MR. SPECTER: That I don't know. You

1 would have to ask somebody from the Department on  
2 that. The more serious, they get murders and things  
3 prosecuted.

4 MR. SEXTON: Thank you.

5 MR. MCFARLAND: Mr. Specter, have you had  
6 any experience with any conflict between a officer's  
7 duty to immediately report a sexual assault and a  
8 privileged communication to a mental health officer  
9 or medical personnel?

10 MR. SPECTER: We have had -- there has  
11 been an issue about what the mental health official  
12 reports, because they have sort of a dual obligation  
13 to both the patient and the employer, and to report  
14 any criminal acts. And as a matter of fact, I can  
15 forward this to you. I have read it, but just in  
16 the last week or so. We got a new policy by the  
17 CDCR, how they are going to treat confidentiality,  
18 how they are going to treat those concerns.

19 I would be happy to share it with you if it is

20 public. But I haven't read it yet.

21 MR. MCFARLAND: Is that public?

22 MS. HARDY: First I heard of it.

23 MR. SPECTER: It is a big organization.

24 MR. DOVEY: It is internal at this point.

25 We don't have any problem sharing it with you.

1                   MR. MCFARLAND: Thank you. How is it  
2 titled so we know it when we see it?

3                   MR. DOVEY: The last time I saw it was a  
4 month ago, working its way through. It was in the  
5 form of a memorandum and policy discussion. I am  
6 not sure how it looks today, to be honest with you.  
7 But we will get it to you. Or do you have it, Don?

8                   MR. SPECTER: I have it in an E-mail. I  
9 can send it to them.

10                  MR. MCFARLAND: Thank you.

11                  MR. SEXTON: The only question I have,  
12 does Mr. Dovey have E-mail? We don't have E-mail in  
13 Alabama. We got plumbing last week.

14                  MR. SPECTER: How many prisoners do you  
15 have in Alabama?

16                  MR. SEXTON: 23,000. L.A. County is as  
17 big as our state.

18                  MR. MCFARLAND: The Sheriff is not  
19 sworn.

20 MR. SPECTER: He is the Sheriff; I believe

21 anything he says.

22 MR. GENNACO: If I may address something,

23 involves privacy and privilege issues, which I think

24 is a disconnect and is a struggle and obstacle in

25 our work in L.A. County on jail violence in

1 particular, and that is federal legislation called  
2 HIPA. There is a state equivalent.

3 MR. MCFARLAND: H-I-P-A?

4 MR. GENNACO: H-I-P-A. HIPA provides  
5 privacy protection for medical records of inmates.  
6 There is an exception for criminal investigations.  
7 There is no exception for Internal Affairs  
8 investigations. So if we want to do an Internal  
9 Affairs investigation against staff, there are  
10 obstacles in getting access to that medical  
11 information. That is important to do sometimes in  
12 those investigations. And there is no exception in  
13 the law, either in California state law or federal  
14 law, for Internal Affairs investigations.

15 MR. MCFARLAND: Thank you. That is all.

16 I want to thank each of you for both your  
17 written and verbal testimony. Very helpful. And we  
18 are adjourned for lunch until 2:00. Panel 7 will  
19 start at 2:00.



20 Thank you very much.

21 (Panel 6 concluded at 12:25 p.m.)

22 (Luncheon break taken.)

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