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PANEL 3

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MR. MCFARLAND: The panel will reconvene.

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This morning we have the privilege of hearing from

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Ms. Lorie Brisbin, who is the coordinator for the

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Idaho Department of Corrections PREA work, as well

7

as the former Secretary of CDCR, Rod Hickman.

8

Thank you both for your time and your insights

9

and your candor. I guess we will start with

10

Secretary Hickman.

11

Oh, we've got to swear you.

12

(Oath administered by Mr. McFarland.)

13

MR. MCFARLAND: Thank you, Secretary

14

Hickman.

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MR. HICKMAN: It's my pleasure to be here.

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It's quite flattering that the panel would reach out

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to me and ask for me to provide testimony to you as

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you go forward in developing what I think is going

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to be protocols, processes and change in

20 organizations across this country that have suffered  
21 from not enough attention for many, many years. I  
22 think that anything that I can provide you of  
23 assistance, I really welcome the opportunity to do  
24 that.

25 I left corrections in February of this year,

1 and I have had the opportunity to both reflect upon  
2 my experience of 27 years when I was in corrections,  
3 from the time I was a correctional officer to the  
4 time I left as Secretary, leading the reorganization  
5 of corrections in California to allow it to be more  
6 thoughtful in the way it went about doing its  
7 business, to allow it to be capable of using  
8 evidence to make policy decisions and to influence  
9 policy decisions in California. But I think in that  
10 time of reflection I have also had the time to spend  
11 in other states and kind of expand my horizon in  
12 regards to those issues that face corrections across  
13 the country, and, quite frankly, PREA is going to be  
14 a significant watershed event, I think, in  
15 corrections for years and years to come. I think it  
16 is going to provide an opportunity for people to  
17 really be clear about what we do in this country  
18 regarding the detention and incarceration and return  
19 of citizens of this country back to the communities,

20 back to our communities. So I think it is an

21 excellent opportunity.

22 The question you asked me to talk specifically

23 about are: What conditions, policies, practices,

24 protocols, training in prison either permit or even

25 promote sexual assault by inmates and staff upon

1 inmates? And then the other side of that question:

2 What are those things that inhibit the incidence of  
3 those activities?

4 I am going to take a different tack that I  
5 originally thought. I had the opportunity to listen  
6 to the testimony of the panel that was before me,  
7 corrections folks from CDCR who I will always  
8 commend for doing a wonderful job. They've taken a  
9 leadership role in many, many areas in California.  
10 I commend John and the group that is still there  
11 doing yeoman's work in California and Director  
12 Thigpen from NIC.

13 I am going to pull back my yoke and go from a  
14 different altitude in sharing with you what I  
15 believe the response to these questions will be from  
16 a different level. So I am going to take a 50,000  
17 foot approach to this and deal with it from a  
18 national perspective, not just those things here in  
19 California, to share with you my experiences as both

20 with the Americans -- with ASCA and as member of the  
21 Board of Governors for ACA, and how we approach this  
22 from a professional standpoint across the country so  
23 you have continuity in what we do

24 MR. MCFARLAND: That is the Association of  
25 State Correctional Administrators and American

1 Correctional Association?

2 MR. HICKMAN: Yes, sir.

3 Of the policies which I think many people have  
4 spoken to, that either inhibit or allow those acts  
5 to happen, you have to clearly look at the housing  
6 policies. You have to clearly look at how you  
7 design, if you have the capability to design. You  
8 have to clearly look at how you modify within  
9 existing designs from a fiscal standpoint of the  
10 plant that house people in the prisons across this  
11 country.

12 Quite frankly, from a 50,000 foot level from a  
13 Secretary of Corrections with an 8.2 billion budget,  
14 I can tell you almost unequivocally ever secretary  
15 or commission across this country has a significant  
16 problem in maintaining its facilities. So when we  
17 talk about whether you can go to the fiscal  
18 environment of the legislature in these states and  
19 say I need X to accomplish Y regarding PREA, when

20 you know that you can't replace your roofs, is

21 problematic.

22 So as you engage with people that are leading

23 correctional organizations across the country, I

24 think that engagement has to include what is the

25 execution of it, how can you really do it and what



1 does the environment in which you live in order to  
2 achieve resources allow you to accomplish it.

3           If you talk about technology, every  
4 commissioner of corrections across this country  
5 probably has a wish list an arm long of those things  
6 they wish they could implement that would improve  
7 upon the safety of both the facility and the staff  
8 and inmates that work there. But how do you do that  
9 within a fiscally responsible environment? How do  
10 you do that within a political environment that,  
11 quite frankly, sometimes is not going to let you  
12 make that investment?

13                   MR. MCFARLAND: Are you talking cameras?

14                   MR. HICKMAN: Cameras, RFI technology --

15                   MR. MCFARLAND: RFI?

16                   MR. HICKMAN: Radio frequency wrist bands.

17 There is technology that is out there available to  
18 really impact the incidence of violence and  
19 incidence of rape and sexual misconduct in the

20 prisons across this country.

21           The question is: One, are you going to find

22 the policy-makers that are in the place to make the

23 decisions to fund it to have the political will to

24 do it? It is a very difficult, very difficult

25 environment in which the commissioners and

1 secretaries are working on a day-to-day basis and  
2 fighting for a finite amount of resources within the  
3 general fund to accomplish that.

4           You talk about design and you talk about  
5 staffing. I overheard the conversation with  
6 Director Thigpen about what that staffing model  
7 should be. But I think if you go look at it from a  
8 higher altitude to get a clear and comprehensive  
9 view of what staffing should be, whether they be in  
10 detention facilities at the county level or state  
11 facilities at the state level or community  
12 correction facilities. There is a lot of input that  
13 you need to put into that process of staffing. What  
14 is the design? What is the deadly force policy?  
15 What type of forces are allowed to be used in  
16 regards to the ability to control a large scale  
17 incident?

18           John Dovey talked about the ratio in  
19 California being six to one. California, generally,

20 has been 48th in the states in regards to staffing  
21 ratio. But California was one of the few states  
22 that had designed prisons with lethal force inside.  
23 Very few prisons across the country have lethal  
24 force deployed inside the secure perimeter. That  
25 was a clear and conscious decision by people that

1 made the decision in the design process to do that.

2           So I think when you look at staff and what can  
3 allow you the ability to both impact or reduce the  
4 incidence of misconduct and sexual rape in prison,  
5 it has a lot to do with those policy decisions made  
6 in the design process.

7           Policies in the area of classifications. And  
8 I think one of things that I'm really glad to see is  
9 the fact we are having a conversation about prison  
10 rape elimination in this country. That, in fact,  
11 will drive a lot of the changes that will happen.  
12 So there needed to be a vehicle of change. And the  
13 vehicle of change very well might be the PREA Act  
14 that makes states and local municipalities look at  
15 things from a different lens than they ever looked  
16 before because of the advent of PREA there. So I  
17 think it is a vehicle of change that we need to  
18 embrace and use. But in doing so, we have to do  
19 that in a thoughtful way.

20 Movement policies. How do you move inmates to  
21 and from? It is a very interesting thing for me as  
22 a practitioner for many, many years. As I came from  
23 the community into corrections, I wasn't always a  
24 corrections professional. I was a community member.  
25 I become a correctional officer. I started to look

1 at the way we do things and often wondered why do we  
2 do things the way we do them.

3 If you look at the way we search people,  
4 there's never been any need before this conversation  
5 to have any kind of privacy for body searches.  
6 Unclothed body searches clearly have been done in  
7 large scale rooms. They still are. It is a matter  
8 of staffing and capability of doing that.

9 MR. MCFARLAND: That is unclothed?

10 MR. HICKMAN: Unclothed body searches.

11 But the one thing I have to say that is of the  
12 most importance to me is, is there a culture in  
13 detention, corrections and supervision of people  
14 that causes dehumanization of the offender? That is  
15 truly a question. Because a deterrent for me as an  
16 individual in society is that as soon as you told me  
17 that I had to bend over, spread the cheeks of my  
18 rectum and cough, I would have been cured. I would  
19 never be back. But I think when it is not -- it is

20 a safety need. But then I think it needs to be  
21 looked at with a different lens as we go forward  
22 with an opportunity to review the policies,  
23 procedures, practices that we use. Can you do them  
24 differently? Can you do them in a way that is not  
25 inadvertently degrading, in a way that allows people



1 to have dignity and respect as they are doing the  
2 time for the crime that they committed in society?  
3 We look at movement, classification and housing.

4           Investigative oversight. What are the  
5 protocols that are used to investigate? John Dovey  
6 talked about the disciplinary matrix and the code of  
7 silence and the things that have gone forward in  
8 California that I think were precedent-setting and  
9 the willingness of corrections professionals to say  
10 things that needed to be said.

11           Now the result of that dialogue is going to be  
12 the policies and procedural changes that come as a  
13 result of that. But the willingness for  
14 correctional professionals to step forward and say,  
15 "Yes, we believe there is a code of silence and,  
16 yes, there is discipline if you don't tell what you  
17 do know. There will be discipline as a result of  
18 that." As John defined as the paycheck protection  
19 plan.

20            Collective bargaining agreements. Director  
21 Thigpen talked about how you have to bring union  
22 folks to the table. You really do have to bring  
23 those folks and collaborate in order to achieve.  
24 But what has happened, in my view, that you moved  
25 from the ability to impact salaries and wages and

1 terms and conditions of employment to political  
2 activism.

3           So are you, in fact, as a secretary or  
4 commissioner capable of making collaborative  
5 decisions with your representatives when, in fact,  
6 the game is not being played in your boardroom? The  
7 game is being played on the air and the televisions  
8 of the people of California. Where is the game  
9 really being played and are you in a position to  
10 really impact the result?

11           And sometimes, quite frankly, the  
12 commissioners and secretaries are not in a position  
13 to do that. They try to stay apolitical. Quite  
14 frankly, the majority would like to be apolitical  
15 and make comprehensive policy decisions based upon  
16 what the practices to improve the organizations are.  
17 But you can't remain apolitical as I live to tell  
18 you myself. But if you could, you would.

19           Where is the real game being played and what

20 is the real result that everyone that is in that

21 game really wants?

22 I think that as you look at policies,

23 procedures and relationships of collective

24 bargaining units across the country, and I had

25 Secretary Pierce, we're dealing with the same type

1 of challenges that I dealt with as Secretary in  
2 regards to how I was being depicted or how I was  
3 being identified as moving forward with the  
4 organization when it is not essentially the truth.

5           Searching practices, culturally. Director  
6 Thigpen talked about culture. What is the culture?  
7 I think when you look at a culture of prison in the  
8 detention facilities across the country, we have to  
9 step back again and have a little broader  
10 perspective. What is the culture of society? What  
11 does society really expect to happen to someone when  
12 they are incarcerated? What is an acceptable  
13 result?

14           I very vividly remember a conversation I had  
15 when I was a captain with a correctional officer  
16 that had worked in a unit where there was an inmate  
17 who was mentally ill that continually ate the flesh  
18 on his arm. The officer came down; he had an  
19 appointment with the captain. Now you have to

20 remember in the culture I am a captain. I have two  
21 bars. I am the head custodial officer. So this  
22 officer had enough courage to come to my office.  
23 He came to my office because he wanted to  
24 resign. He came in and said, "Cpt. Rick, I need to  
25 resign."

1 I said, "Why do you need to resign?"

2 He says, "Because this guy's mentally ill. We  
3 take him to the clinician. They give him his  
4 medication corrected and he doesn't do it any more,  
5 and then three or four days later he doesn't take  
6 his medication and he does it again. We take him  
7 back down there and he does it again." He says, "I  
8 can't do it anymore. I just can't do it anymore."

9 I tell him, I told him, "I am proud of you  
10 because I have hundreds of people out there that  
11 believe that is normal, that they have to become  
12 callous to that real human tragedy that's existing  
13 in the prison. So when you look at the culture of  
14 corrections, the culture of corrections and prisons  
15 in this country is nothing more than a microcosm of  
16 what the impact of society is.

17 So what is supposed to happen when someone  
18 comes to prison? Is it what you see on Oz? Is it  
19 supposed to be what you see on Prison Break? Is it

20 supposed to be The Shawshank Redemption? Is it  
21 supposed to be the movies that are depicting what  
22 the prison non-reality is? So that is what  
23 influences people in the policy area.

24           So when you talk about are you capable of  
25 doing things from a policy standpoint, the



1 commissioners and the secretaries are going to have  
2 to respond to the political environment and who  
3 influences those people. That is the real question  
4 you have. I hope I am not too far out on those  
5 issues, but I think those issues have been really  
6 clearly identified by the panelists before me.

7           In the area of training on both sides of the  
8 equation, inhibiting or prohibiting, investigative  
9 training is of the utmost importance. The  
10 investigative training needs to be far more  
11 comprehensive, to talk about the prosecutors for the  
12 DAs or investigators for the District Attorney's  
13 office, if they, in fact, have them.

14           What is the District Attorney's discretion in  
15 regards to prosecution? The training has to happen  
16 in those areas so that if you are really going to  
17 accomplish it, it has to be done in a way that is  
18 collaborative with those District Attorneys and  
19 those local municipalities and the prisons in a way

20 that they understand what the result will be. And

21 there is a finite amount of prosecutorial dollars.

22 There is a finite amount of it, so we have to talk

23 about what that fiscal impact is. What are the

24 values of those people that are doing them?

25 So in closing, I will say this: to accomplish

1 what really needs to be accomplished in the change  
2 of corrections under the auspices of PREA, it will  
3 take a societal change, societal education. It's  
4 going to clearly take leadership, both for those  
5 people that are in detention leadership positions  
6 and those people in political positions that oversee  
7 the operating leadership of detention facilities.  
8 It is going to take political courage. It is going  
9 to take the willingness of people to have a  
10 conversation that is not politically correct, but is  
11 real. It is going to take the reality that you  
12 can't continue down the path that we are without  
13 impacting it fiscally. What you are willing to pay  
14 to accomplish what we want to accomplish in the  
15 improvements of prisons across the country. It is  
16 going to take a realization for us to talk about.  
17 Do we dehumanize people when they are incarcerated?  
18 Do we or not? It is going to take responsibility  
19 for the associations of corrections to be at the

20 table for the American Association of State  
21 Corrections Administrators, American Correctional  
22 Association, criminal and juvenile justice  
23 administrators, all administrators in the DAs  
24 administration; all those folks have to be able to  
25 talk about the true definition of punishment.

1           Is punishment incarceration as we stated or is  
2   it the experience of the punishment? That is the  
3   true sense that we have to talk about in order to  
4   change those. And the bottom line is going to take  
5   execution. Government is great in grandiose  
6   schemes. We've got to excute. We have to put some  
7   metrics behind it to say these are the things that  
8   you should do, these are the metrics that you should  
9   have, these are the ways we are go to measure that,  
10  with solid empirical data.

11           One of the things that California did was to  
12  change its mission to improve public safety through  
13  evidence-based contravention and recidivism  
14  reduction strategy. Evidence does not agree all the  
15  time with politics. It is an amazing phenomenon.  
16  So one has to sort out the noise, what is real and  
17  what is anecdotal and what is true metrics. So  
18  there has to be education of the media, of the  
19  political environment. There has to be leadership

20 taking responsibility of telling the true story and  
21 willing to be courageous and say what is really  
22 going on in prison, and we have to talk about what  
23 the catalyst of change is going to be.

24 My belief is, now that I've been away from it  
25 for a while, that the catalyst is change. Whether

1 the people like it from a policy or program  
2 standpoint, the catalyst of change very well might  
3 be fiscal. It very well might be can we continue  
4 down the path that we are going and sustain it  
5 fiscally. And the answer to the question is no.

6 So whatever that vehicle, change needs to be.  
7 I think that the catalyst for that change will be  
8 whether or not it is going to be fiscally  
9 sustainable.

10 So I hope I have been helpful in my comments.  
11 I don't know if I answered your questions. I'd  
12 appreciate follow-ups to probably do that in more  
13 detail. I think a lot of the information that you  
14 asked me I think was provided by other panelists. I  
15 wanted to just give you a different perspective from  
16 my point of view.

17 Thank you very much.

18 MR. MCFARLAND: Thank you very much,  
19 Mr. Hickman.