

1 for questions?

2 MR. ALVEY: Yes.

3 MR. MCFARLAND: So I think unless there is  
4 anything immediately for Lt. Alvey, we will go to  
5 Mr. Specter, hear his prepared testimony and address  
6 questions for the whole panel.

7 MS. ELLIS: Yes.

8 MR. MCFARLAND: Thank you, Mr. Specter,  
9 for being here.

10 MR. SPECTER: You're welcome. Because of  
11 the short notice I was unable to give you a written  
12 testimony.

13 MR. MCFARLAND: Can you hear in the back?

14 MR. SPECTER: Anyway, my name is Donald  
15 Specter. I am the Director of the Prison Law  
16 Office. The Prison Law Office is essentially a  
17 public interest law firm which has one main goal,  
18 and that is to improve the conditions of confinement  
19 for California prisoners and youthful offenders,

20 whether they be in state prisons, the state youth  
21 authority or the state juvenile facilities.

22           The Prison Law Office has been in existence  
23 since 1976, and we have filed lawsuits and done  
24 other advocacy work on behalf of that group that I  
25 just mentioned on a range of prison conditions,

1 virtually all conditions that you can think of.

2           The Department of Corrections and  
3 Rehabilitation is now operating under either  
4 injunctions or consent decrees in a large number of  
5 cases that we have brought. So we are very familiar  
6 with the conditions. We have people in California  
7 prison systems doing monitoring of these consent  
8 decrees or injunctions on a daily basis. We get  
9 letters from over a hundred prisoners a day seeking  
10 our assistance, which we can't possibly keep up  
11 with. We negotiate frequently with the Department  
12 of Corrections about trying to improve the  
13 conditions. We are not a profit organization, and  
14 we have staff of 13 lawyers.

15           In spite of the fact that we have brought all  
16 these lawsuits and have expertise in virtually every  
17 aspect of prison conditions, we haven't really done  
18 much in the area that you're interested in. Partly  
19 that is because of the lack of information that we

20 received from prisoners, their willingness to  
21 disclose even to us the fact that they have been  
22 sexually abused. And I think so that limits my  
23 ability to kind of give you the information that I  
24 think you need, but I think it is a problem that  
25 pervades the subject area which you are dealing

1 with.

2           When I go into the prisons and talk to  
3 prisoners in these dormitories, which I will  
4 describe in a moment, which are rife for abuse, you  
5 get very little information about sexual assault,  
6 although they will say that prisoners steal property  
7 or they do this or that, you have to have, I think,  
8 a special relationship with the prisoners before  
9 they will begin to disclose anything like that.

10           We have done some cases which border on this  
11 subject. We brought -- we filed a civil suit  
12 against that male physician for sexually assaulting  
13 a female patient, and that case settled for a  
14 relatively small amount of money after the  
15 physician, who is charged criminally in the case was  
16 acquitted of the charges. And it was again some of  
17 the things that Mr. Gennaco was describing.

18           You had prisoner with a -- from a --  
19 relatively uneducated, who was going against a

20 physician who is very well educated and a prisoner  
21 who had a criminal record, and it didn't make for an  
22 even match, and the lawyers weren't matched evenly  
23 either.

24 We have also encountered juveniles as  
25 prisoners who have been raped by other prisoners,

1 but again not large numbers. At least one male  
2 prisoner informed us that he had been forced to have  
3 sexual encounters with a male staff member. We have  
4 had juvenile offenders in the state juvenile system  
5 approach us with those offenses. I will describe  
6 that in a moment. Before I do, I would like to put  
7 this in the context of what I believe is sort of a  
8 larger problem.

9 I believe that the prevention of rape, of  
10 sexual assault is a subset of a larger issue of  
11 prevention of violence to prisoners, in other words,  
12 keeping them safe in prison while they are there.  
13 And for this reason many of the same principles  
14 which apply to prisoner safety, which Mr. Gennaco  
15 just covered in his excellent presentation, apply  
16 also to prisoners who are at risk of sexual abuse.  
17 And those correctional principles are no secret.  
18 They are very standard.

19 And the first and most basic one in this area

20 is classification. Upon entry, prisoners must be  
21 classified according to an objective assessment to  
22 determine the risk they pose to either inflict or  
23 suffer harm. In its most basic form, these  
24 classifications principles require that prisoners  
25 who are at a higher level of risk from inflicting



1 harm be separated from those who are vulnerable to  
2 the infliction of harm.

3           Some of the -- it is also no secret who is  
4 vulnerable to risk. Prisoners we found who are, for  
5 example, mentally ill are at risk more than other  
6 prisoners. Prisoners who are developmentally  
7 disabled, mentally retarded. Prisoners who are weak  
8 for some reason or another or prisoners who are  
9 young and as such are inexperienced of the ways of  
10 prison society, such as the young man that  
11 Mr. Gennaco mentioned who was incarcerated for  
12 having parking tickets. You don't go to prison for  
13 parking tickets, but it does indicate the type of  
14 person who is vulnerable.

15           The youth facilities in California, what they  
16 call Division of Juvenile Justice now, used to be  
17 called the California Youth Authority, have not had  
18 a working classification system for years, and only  
19 now because of the court order and the lawsuit that

20 we have brought are these facilities beginning the  
21 rudimentary efforts to classify prisoners according  
22 to levels of risk. And consequently, we have found  
23 youth who have been subject to violence from other  
24 youths, including sexual assault. And that is what  
25 happens, in my opinion, when a facility operates

1 without a proper classification system. And the  
2 results of that is illustrated by the following  
3 example:

4           This was a kid who was put into a double cell  
5 in one of the state's highest maximum security, if  
6 there is such a thing, in the youth authority. He  
7 was put into a double cell. A week later he got  
8 into an argument with his cell mate, which turned  
9 violent. They fought, the youth told us, for about  
10 30 minutes, yet no intervention by the staff during  
11 that time.

12           And the cell mate said, "I am going to stop  
13 fighting. I don't want to fight anymore. Let's  
14 cool it."

15           The youth who complained to us started to  
16 climb up to the top of his top bunk. While he was  
17 getting up to his top bunk, he was bludgeoned on the  
18 head by the cell mate knocking him unconscious. And  
19 when he woke up he had pain in his rectum and blood

20 in his boxer shorts.

21 That led, of course, to a lot of anxiety on  
22 his behalf, and eventually the staff became aware of  
23 this incident, but not until it was over. This  
24 young man was not taken to an environment where he  
25 could recover from his trauma. In fact, instead he

1 was placed in administrative segregation which at  
2 that time and still today consists of being locked  
3 up for 23 hours a day in a cell with no programming,  
4 no contact with other people. And then no  
5 counseling or treatment, besides the visit to the  
6 doctor for injury.

7 After that he was transferred to the place,  
8 which is almost unbelievable, but he was transferred  
9 to a housing unit at another prison but this  
10 particular housing unit was for sex offenders. The  
11 only medical health treatment that he received for  
12 his trauma was not rape counseling, which he  
13 requested, but was medication that was designed to  
14 help him go to sleep. The result was by 5:00 every  
15 day he was falling asleep, and that was it.

16 So beside the obvious failure -- so this  
17 happened just within the last year or so. Beside  
18 the obvious failure to properly classify him before  
19 the rape and list what I call cruel transfer to

20 segregation and then even crueler transfer to a sex  
21 offender unit, this case shows what happens to rape  
22 victims when officers don't receive the appropriate  
23 training on what to do to people that have been  
24 sexually assaulted, when there aren't enough  
25 custodial supervision like Mr. Gennaco mentioned,

1 when counseling is not provided, when safe housing  
2 isn't available because of overcrowding. And what  
3 makes the situation worse in many respects is the  
4 overcrowding and also the attitude of the officers  
5 and the other prisoners to sexual assaults.

6 One function of overcrowding is inadequate  
7 staff and another is also that the housing areas,  
8 the prisoners are housed in areas that they are not  
9 designed -- that are not designed for careful  
10 supervision. In California prisons, for example,  
11 prisoners are stacked three high in bunks in  
12 gymnasiums and day rooms that have been converted to  
13 housing units. I don't know if you've seen some  
14 pictures. They were in the paper just recently. We  
15 filed a lawsuit about overcrowding.

16 MR. MCFARLAND: We toured.

17 MR. SPECTER: Great.

18 You saw that, I am sure, that it is impossible  
19 to maintain the line of sight supervision in these

20 conditions for the two or three officers who patrol  
21 that during the day. And I would say at night it is  
22 just about impossible to do anything without fear of  
23 being caught among the prison population. Because  
24 from what I have been told, the officers, they are  
25 up on the stage sometimes or in the post and you can



1    imagine late at night they are not walking around.  
2    They are just sitting there.  So the other -- that  
3    problem is pretty much self-evident.

4            The other problem, I think, is insensitivity  
5    by the staff to sexual assaults.  It is not unusual  
6    at all for prisoners who are victims of sexual  
7    assaults to receive harsh treatment instead of  
8    counseling that they need.  Under the circumstances  
9    I think it is difficult for a prisoner to be able to  
10   tell an officer or guard or counselor that he has  
11   been sexually assaulted because he knows, he's seen,  
12   he's heard the response: the sexual jokes that are  
13   made as a matter of course during the day.  In fact,  
14   we found instances where one staff was actually  
15   aware of the problem.  They actually perpetuated  
16   rather than reduce or mitigate the problem.  They  
17   have teased prisoners.  They let other -- this  
18   happened in youth authority.  They have made  
19   comments, public comments, while the youth is there.

20 They let other youths know that the youth who has  
21 been sexually assaulted has, in fact, been sexually  
22 assaulted.

23 I think that is in part due to the culture of  
24 most of the correctional facilities where weakness  
25 and vulnerability are borne by both the staff and

1 people who are incarcerated in them. And I think  
2 changing that culture demands appropriate training  
3 of staff. But officers rarely receive training on  
4 how to handle sexual assault victims, other  
5 mechanical aspects of investigating a crime and  
6 taking to the hospital and the like. And it also  
7 demands, I think, education of prisoners about the  
8 steps that they can take to report and prevent their  
9 being sexually assaulted.

10           The other problems you have in a prison where  
11 there is very little privacy is the confidentiality  
12 of the reporting itself. The women who I told you  
13 about who claimed and what I believe was sexually  
14 assaulted by the physician, it was a very big  
15 problem when she came to us, what do we do. Because  
16 to report it was to give information to the doctor  
17 that she had before this time, and that was spread  
18 throughout the prison and we eventually reported it  
19 with the assurance of confidentiality from the head

20 of the Internal Affairs Office for the Department of  
21 Corrections who I happen to know. If I didn't know  
22 that person, my professional feeling is that we  
23 would have a major problem.

24 The other problem we have seen in California,  
25 prisons, and Mr. Gennaco is helping us to remedy, is

1 the fact that investigations are often terrible by  
2 internal affairs. Certainly they were at that time.  
3 If you can't have any certainty that the  
4 investigations are going to be adequate and actually  
5 rigorous and thorough and actually get at the truth,  
6 then what good is the reporting in the first place?  
7 So those are the major problems.

8           So I listed about six bullet points, about  
9 seven bullet points about what needs to happen to  
10 reduce sexual assault. These are no secrets. There  
11 must be adequate policy and procedures for  
12 preventing reporting, treating and investigating  
13 sexual violence. The staff must be trained on the  
14 policies and procedures.

15           Third, the staff must be educated about the  
16 harm caused by sexual violence, the reporting  
17 mechanisms and obligations. There must be a  
18 reporting system that guarantees confidentiality.  
19 The prison must have an effective classification

20 system and a safe place to house potential and  
21 actual victims. There must be an appropriate line  
22 of sight supervision by correctional staff. And  
23 this is something that the prison is not -- this is  
24 something that is prison correctional operations 101  
25 that you must have line sight supervision. But I

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1 found in my dealings with prisons it's actually hard  
2 to make them have enough officers to do line of  
3 sight supervision. They just make excuses about why  
4 the staffing is adequate. And, seven, the prison  
5 can't be so overcrowded that an effective  
6 classification and supervision is impossible.

7           It seems to me that it wasn't too long ago  
8 that rape, when I was growing up, that rape victims  
9 in the free population were not treated with the  
10 respect that they deserve. And today you find that  
11 there aren't jokes about rape, but there are still  
12 some jokes about prison rape. You can see it on TV  
13 or search the Web and you can find it within a  
14 minute, about rape in prisons.

15           And it seems to me that the police and the  
16 medical communities have to become educated about  
17 the seriousness of the harm in the prisons and the  
18 need to protect and treat the victim within the  
19 prison system. They have done that in the

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