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PANEL 2

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MR. MCFARLAND: It is s privilege to have

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the Director of the National Institute of

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Corrections, Morris Thigpen, here. And as has been

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mentioned a number of times by members of the first

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panel of witnesses, NIC is frequently the

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clearinghouse of best practices and on the cutting

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edge of correctional innovation. And I say that as

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a fellow Justice Department employee.

11

So without further adieu, Mr. Thigpen, thank

12

you very much for joining us and sharing with us.

13

MR. THIGPEN: It is good to be here.

14

Again, I thank you for the opportunity. I was

15

privileged when I saw the members of the panel to

16

say that Sheriff Sexton was on this. I had the

17

opportunity to work with him for a number of years

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the time I served as Commissioner of Corrections in

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Alabama.

20 MR. MCFARLAND: I am remiss. Mr. Mazza
21 has reminded me that I need to swear you in, not
22 that I have any question about your veracity.

23 (Oath administered by Mr. McFarland.)

24 MR. THIGPEN: Now I have to change my
25 testimony about Sheriff Sexton.

1 MR. SEXTON: I was wondering about that.

2 MR. MCFARLAND: That is why the sheriff
3 asked me to swear you in.

4 MR. THIGPEN: He was a leader in the state
5 and president of the National Sheriffs Association
6 and continues to be one of the leading proponents in
7 the National Association of Sheriffs.

8 MR. MCFARLAND: Can you all hear?

9 Slide that up.

10 MR. THIGPEN: Is that better?

11 MR. MCFARLAND: Warden Malfi, can you
12 hear?

13 MR. MALFI: Yes.

14 MR. THIGPEN: In Section 5 of the Prison
15 Rape Elimination Act, the NIC has a number of
16 responsibilities to provide training and education,
17 a clearhousing, to make a report to Congress on what
18 is being done. I think we have some knowledge and
19 experience that we can share with this group. I

20 think that is due to the fact that we have had over
21 30 years of providing assistance to correctional
22 agencies through NIC.

23 We have certainly a specified role under the
24 PREA law, and I think also we knew from the very
25 beginning we had an opportunity to build, as far as

1 our work with the PREA legislation, on the basis of
2 work that we've been doing for almost a ten-year
3 period on staff's sexual misconduct.

4 You would frequently hear me use the term
5 "we," and I do that very purposefully. Because I
6 think the knowledge and information that I have
7 tried to share with you is not just mine alone, it
8 comes from the work we have done with many of the
9 individuals that we have had the opportunity to work
10 with over the years.

11 In 1996, we began an initiative to assist the
12 field in addressing the issue of staff sexual
13 misconduct. Our early work, which really was
14 stimulated by the awareness of litigation in women's
15 prisons, that raised the visibility of staff sexual
16 misconduct. I think at that time a lot of this
17 misconduct was really approached from the standpoint
18 of you just got a few bad apples out there, and if
19 we deal with a few of the bad apples we can solve

20 the problem. I think what was significant that we
21 have learned about our focus and approach in NIC was
22 acknowledgement that an effective correctional
23 management response requires more than just a few
24 bad apples approach.

25 In fact, to understand staff sexual misconduct

1 as an agency, we must look at coordinated
2 strategies, create strategies, and sometimes we
3 refer to that as a management tool kit. This
4 systemic approach has served us and the field well
5 as a conceptual framework to address the critical
6 concerns highlighted in the Prison Rape Elimination
7 Act. We would suggest that if these components are
8 not addressed, the environment is not conducive to
9 deterrence.

10 Generally, our systemic approach recommends
11 that agency leadership ensure that the following
12 areas are addressed, and a number of these have
13 already been mentioned in previous testimony from
14 California.

15 Certainly leadership and direction that it
16 provides. The law that exists needs to be put on
17 the books. Policies, training, investigations,
18 management and operations. Media response. Inmate
19 offender programming. Culture. Victim assistance

20 and after action response. All of those, any number
21 of these have been mentioned in some of the previous
22 testimony.

23 We have produced a video, and we have used
24 videos as a means of trying to reach a large
25 audience. Because when you look at the field of

1 corrections and the numbers that are out there and
2 that need to be informed about PREA and to have
3 assistance in trying to deal with the problem that
4 exists, it is almost overwhelming. We have found
5 that throughout our videos this has been one
6 mechanism that has worked well for us.

7 In the packet of materials that I placed at
8 each of your desks, there is a copy of the video
9 along with the resource guide that went out to the
10 agencies to try to help inform them of the PREA act.

11 We also have used extensively cooperative
12 agreements. We have a number of these. One of our
13 main ones is with the Moss Group, and the other one
14 has been with the American University, the
15 Washington College of Law. Both of these agencies
16 have assisted in developing action plans and
17 strategies that support this systemic approach.

18 Training and technical assistance has touched
19 just about every study and permeated through all

20 levels of corrections. We have served prisons,
21 jails and community corrections. More recently we
22 are beginning our work in the juvenile justice
23 field. I don't think that has been mentioned at
24 this point today in any of the testimony. But
25 juveniles do fall under the purview of the PREA

1 legislation. We right now have completed a video
2 entitled "Keeping Our Kids Safe," a tool for
3 juvenile professionals. It will soon be going out
4 for administrators across the country. This summer
5 American University will begin a training program
6 designed for juvenile justice. We have begun
7 on-site technical assistance with the field.

8 In the last 11 years that we've been working
9 with staff sexual misconduct and with the PREA
10 legislation, we have completed almost 200 on-site
11 technical assistance events focusing in these two
12 areas.

13 There are a number of people in the audience
14 today that have participated with us in that effort.
15 Couple of them, I believe, are scheduled to testify
16 later before you. Robert Dumond and Barbara Owen.
17 Tina Farmer is in the audience, Andie Moss and Dee
18 Halley. Also I would be remiss if I didn't mention
19 the assistance we've gotten from Stop Prison Rape.

20 They have also been very helpful with our efforts.

21 This week, for instance, we are working in
22 Wisconsin, assisting them with working with union
23 presidents, one of the areas that you have asked
24 specifically about. It is with this background of
25 knowledge and experience that we respond to some of

1 the questions that you raised. The first of these:
2 What factors and environment are or are not
3 conducive to deterrence of sexual assault in prison?

4 I would mention one of the main factors is
5 leadership in culture. When you go into any prison
6 setting or any kind of setting in which people are
7 maintained in corrections, if there is allowed in
8 there a sexualized environment among the staff, then
9 it is not surprising that some staff and offenders
10 may feel more permission to participate in sexual
11 conversations and more. As one walks around in
12 facilities, listens to conversations, looks at
13 things on the wall, talks with people, you're going
14 to get a feel, I think, of just what the environment
15 is like there. And it is very important to
16 determine what that is like.

17 If leadership does not hold all staff
18 accountable for reporting misconduct, then a code of
19 silence is going to prevail. The culture of a

20 facility, and in the fact of culture we are talking
21 about the norms, behavior and attitude of staff and
22 offenders, is impacted by the leadership and
23 day-to-day management and operations.

24 I would suggest to you, as you begin to look
25 at those entities that have been brought before you

1 that seem to be doing the best job in deterring
2 prison rape and sexual misconduct, you are going to
3 find that leadership may be played one of the most,
4 if not the most, important role in that success.

5 Culture is impacted by location. One of the
6 things that we have picked up in some of our work,
7 you sometimes see some real contrast where maybe you
8 have an urban population that is in a prison setting
9 that is in a rural area and where most of the staff
10 come from that same area. There are conflicts in
11 some of the cultures that exist. So that is another
12 area that I think has to be looked at and
13 understood.

14 Another thing about the culture, if a facility
15 is run on the basis of fear rather than hope-based,
16 we believe the environment is not conducive to
17 deterrence. I think, again, as you move about in
18 any facility, if you have been in the business of --
19 maybe if you haven't been in the business -- I think

20 you can begin to make that determination of fear,
21 whether this is a facility that is run on the basis
22 of fear or whether it is on the basis of
23 programming, the hope, potential that is given to
24 staff, to inmates that there is something better.
25 There is the opportunity to improve. There is a

1 chance to become a law abiding person. And so I
2 hope that would be one of the things you would be
3 looking at.

4 Another factor around management and
5 operations. Poor management and operational
6 practice can lead to sexual violence in
7 institutional settings. There are any number of
8 factors there. I think where you see excessive use
9 of overtime you may find that, as a result of that,
10 some of the staff become overfamiliar with certain
11 inmates, and that is where some of those
12 relationships may begin to build.

13 Compromised grievance processes can become a
14 real factor. Investigations that lack credibility
15 and integrity. Poor classification. Overcrowding.
16 Certainly I think that was emphasized in the
17 previous panel. They talked about what California
18 faces. And then poor or no training of staff and
19 offenders.

20 Another factor that again was referred to in
21 the previous panel was around law and prosecution.
22 State laws have a tremendous impact on these issues.
23 All states have some laws, but they vary widely in
24 penalties. One of the things that NIC, that we are
25 proud of, is, I think, certainly when we looked back

1 at the point when we began our staff sexual
2 misconduct work and the continued work we've done in
3 PREA, I believe that we have had some impact on
4 helping so many of the states to change their laws
5 and to increase the penalties, moving from
6 misdemeanor to penalties. That is something that we
7 are very, very proud of. Some of the states had no
8 laws at all in this area.

9 We also in some of the cases that we have done
10 in American University, we have had individuals from
11 states can come in and when asked about certain laws
12 that existed, they were not aware of what the laws
13 in their own state were. So there is education
14 practices there that is needed in the training.

15 Some states have laws in sexual misconduct
16 that prosecute both staff and offenders. This
17 sometimes led to problems in getting offenders to
18 come forward and for agencies to proceed with the
19 prosecution. Certainly there was discussion

20 previously about the lack of prosecution and the

21 priority that is sometimes given to them

22 Your second question: Which system protocols

23 and policies require examination?

24 We would suggest a number of policies and

25 protocols are to be considered in policy review of

1 the area. In reviewing these, administrators should
2 look well beyond the obvious ethics and
3 fraternization policies. In the packet you will
4 find a policy guide attached that gives outlines and
5 important considerations that we feel agencies
6 should address in developing strong PREA policies.
7 I think you have this. It is actually a very, I
8 think, good tool. It goes through a number of areas
9 asking a series of questions, and they are asking
10 you to respond to those about your agency or your
11 state, and that can be a way of really identifying
12 whether there are shortcomings in terms of the
13 policies that exist.

14 The Moss Group and NIC provide technical
15 assistance to the states to help address and to help
16 look at the whole question about policy. And we
17 have done that in any number of areas. But just
18 writing good policy is not the end. The agency
19 leadership must assure they are translating,

20 including in staff POST orders, training plans and
21 on-the-job training units.

22 Your third question: What staff positions in
23 such a system would be key witnesses?

24 I think that would include a broad range of
25 staff. Typical interviews in the work that we do

1 are held with administrators and his or her
2 executive team. Others generally include the
3 investigator or chief of internal affairs, shift
4 commanders, medical staff, supervisory staff, some
5 line staff and inmates. Union leadership is also
6 very important. Others are identified based on the
7 presenting issues of the work. We don't need to
8 forget areas like food service, recreation, plant
9 maintenance or inmate work supervisors. From a
10 larger systemic perspective, prosecutors, deputy
11 commissioners, commissioners, human resource
12 personnel, legal counsel and others should all be
13 considered.

14 For the panel, review of recent cases from a
15 facility may be useful in determining key staff to
16 be interviewed. They can sometimes provide, I
17 think, important clues as to what is going on.

18 Fourth question: How to examine the training
19 of correctional officers and medical staff on prison

20 rape?

21 We would urge the Review Panel to broaden your

22 question. Training is critical for all staff,

23 volunteers and contractors. The training should

24 include topics such as thorough review of local

25 policies, state and federal laws, the dynamics of

1 staff and offenders in facility settings, reporting
2 mechanisms, maintaining professional boundaries, red
3 flags or warning signs, the whole investigator
4 process.

5 Specifically, correctional officers should
6 have training on how to maintain those professional
7 boundaries. Case examples of misconduct and abuse.
8 Sometimes role playing in a training situation can
9 be a very powerful training pool. How do you report
10 misconduct? How to maintain integrity of
11 investigation as a first responder, how to respond
12 to staff or offenders if they are first responders
13 or sense a problem developing? In other words, some
14 very important skilled-based training.

15 Medical staff should also be trained.
16 Medical investigation protocol, confidential
17 protocol, the role of medical and coordination with
18 other staff regarding reporting. In addition to
19 reviewing the training content, we suggest verifying

20 training schedules, determining that the training is
21 offered to new hires as well as current staff,
22 volunteers and contractors, and identifying the
23 frequency of this training. It is very easy
24 sometimes to go and ask about training and be given
25 a very impressive outline of what is done in

1 training, but you need to verify that that is being
2 used and actually implemented.

3 Five: What are the likely barriers to
4 reporting, accurately investigating and deterring
5 prison rape?

6 In your packet of information we have provided
7 you with a research bulletin that is called "Staff
8 Perspectives." In this we collected from 12 site
9 visits around the country and involved over 300
10 staff on all levels in our work. I think you will
11 find some very usable and informative ideas here
12 that in the job that you are assigned to do could be
13 very helpful.

14 They describe some of the barriers. A low
15 confidence in the investigative process, a lack of
16 cooperation with investigation, a fear of
17 retaliation, shame and guilt, false reports,
18 difficulty in determining consensual sex among
19 inmates, the code of silence. We would add to that

20 list attitudes of leadership, poor response from
21 some prosecutors and other red flags we previously
22 mentioned in responding to question one.

23 Finally: How do you assess the role of the
24 correctional officers' union in deterrence of prison
25 rape?

1 Union leadership should always be considered a
2 part of the solution. Union buy-in is critical to
3 effective practice in addressing prison rape. Areas
4 to consider: Involvement in the policy development
5 process. It is not good practice to sit down,
6 develop all the policies and then, without input
7 from the union, expect them to just come in. That's
8 great. They need to be involved in the development
9 process.

10 Meetings with union leaders and agency
11 administrators to discuss the safety issues involved
12 for union members if prison rape is not addressed.
13 We must realize one of the main purposes of that
14 union is to maintain the safety, both of their staff
15 and the inmate population. Unions want safe prisons
16 for both staff and inmates.

17 I want to assure your group that from NIC's
18 standpoint that whatever we can do to assist you
19 with any information, materials that we have, they

20 certainly are available to you.

21 And finally, closing, I did something before
22 leaving the office on Monday. I went and looked at
23 the Bureau of Prisons files that we get each day on
24 Newsclip. And I went back and looked for the month
25 of just November, and there were four cases that

1 were highlighted in those newsclips.

2 One out of Oregon where an officer took
3 advantage of a mentally, handicapped female inmate
4 and bribed her for sex with a can of Copenhagen.
5 Say those things don't happen. They do happen.

6 Up in New York an officer there in a jail who
7 had abused a number of inmates. Interesting, one
8 out of, I believe this one was in Washington state,
9 where a contractor who was an X-ray technician
10 engaged in, and he had just been convicted of,
11 sexual misconduct with a male inmate.

12 And then the other major one that is going on
13 right now is a trial that is underway in
14 Tallahassee, Florida, as a result of the federal
15 facility there, in which an officer from the OIG's
16 office was killed and a number of officers that are
17 under indictment.

18 MR. MCFARLAND: That is Office of
19 Inspector General.

20 MR. THIGPEN: Right, excuse me.

21 So there are things going on out there that
22 are for real, and we need to address.

23 MR. MCFARLAND: Thank you very much,

24 Mr. Director. Questions?

25 MR. SEXTON: Morris, Mr. Thigpen.