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1 asked the director that, but they do receive bonuses
2 for being under budget. At what expense? This is
3 part of the problem here, and it needs to be
4 addressed. I don't know what the answer is.

5 I know there's good employees out there
6 trying every day. And they're calling me now.
7 Tonight I'm going to tell them, what did I tell the
8 Commission? I told them the truth. But I don't
9 have an answer. But I can tell you there's federal
10 employees that are still trying.

11 That's all I got.

12 CHAIRMAN WALTON: Thank you very much for
13 your testimony.

14 Mr. Baumann, what does a correctional
15 officer in California -- what's the starting salary?

16 MR. JOE BAUMANN: You would have to ask me
17 that. I can't remember what it is off the top of my
18 head. Roughly 32-, \$33,000, if I remember
19 correctly.

20 CHAIRMAN WALTON: We're involved,
21 obviously, in fact-finding. We're trying to assess
22 why problems exist, and we appreciate your
23 appearance and your testimony.

24 We have heard on several occasions,
25 including during this hearing, about your

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1 organization and its power, and the claim that
2 because of that power, it undermines the ability of
3 the system to reform itself.

4 MR. JOE BAUMANN: And I beg to differ. You
5 know, define "reform." When you get into issues
6 like what we're talking about here, we've put our
7 time and energy and effort into getting good-quality
8 investigations, having the legislature set standards
9 for preemployment screening for Internal Affairs
10 investigators and standards for Internal Affairs
11 investigators. There's nothing that does a bigger
12 disservice to the good employees at the institution
13 than to have a bad person fall through the cracks.

14 We have a duty and an obligation to
15 represent the employee while they're going through
16 due process.

17 When you're talking about legislatively,
18 when you talk about institutions that were designed
19 strictly to warehouse inmates, that were designed
20 specifically so 10 percent of the inmates at a
21 hundred percent capacity can go to class, but you're
22 running 200 percent. You go to an institution like
23 San Quentin with -- San Quentin hasn't had any major
24 construction in 70 years. There's four classrooms
25 at San Quentin with 6200 inmates. It was done

1 before you and I were born.

2 When you get into reforms, like training
3 for staff, Sunshine -- we just had a big brouhaha at
4 the end of this last legislative session. We
5 supported media access, a media access bill drafted
6 up by Senator Romero to allow reporters to come into
7 the prisons to see what's going on. Governor
8 Schwarzenegger decided to veto it for a second time
9 in as many years.

10 In the last six years, that same basic
11 legislation has been vetoed five times. We've
12 helped shepherd it through the legislature. We've
13 asked for accountability for managers. We were the
14 ones who sponsored the legislation to put the Office
15 of the Inspector General in place.

16 And just because I disagree with somebody's
17 interpretation or somebody's vision of reform,
18 building more prisons doesn't reform the system. A
19 lot of the recommendations that came out of the
20 Deukmejian Commission I agree with. I have the only
21 indeterminate sentencing program in the state
22 specifically for drug offenders.

23 But the Governor's office decided to cap
24 that at a thousand inmates. That's designed for
25 first- and second-time offender drug users. But

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1 it's capped.

2 Until I see some movement there, there's
3 no -- in my opinion, there's no commitment to reform
4 from the Governor's office or from leadership in the
5 department. And reform starts at the top.

6 I've got a couple of legal cases where you
7 have male inmates at youth authority that are
8 sentenced to programs for sexual predators, that are
9 allowed to grope the female staff and are not
10 disciplined.

11 There's a case out at Pelican Bay, Freitag
12 versus Ayers, where the inmates were masturbating,
13 openly masturbating at female staff. The female
14 staff would turn around and write the inmates up,
15 management would throw it in the trash, and there
16 would be absolutely no punishment. That's a crime
17 in California, yet management wouldn't turn around
18 and refer it to the district attorney for
19 prosecution. They wouldn't do any sort of
20 administrator sanction.

21 What signal does that send to the staff?
22 What signal does it send to the predatory inmates?
23 You're not even going to protect your female staff?

24 So reform begins at the top.

25 CHAIRMAN WALTON: Do you agree with

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1 Mr. Ortiz as far as the California system is
2 concerned, that the inmates control the
3 institutions?

4 MR. JOE BAUMANN: To a certain degree, yes.
5 And anytime that we go in and -- we just had several
6 incidents at minimum yard at Chino, which is just
7 down the road from me. I had to loan staff to Chino
8 to go in and strip out their minimum security yard
9 because they had so many staff assaults that the
10 warden finally said, enough of this, and went in and
11 spent a week cleaning the institution out.

12 And the inmates did their best to resist it
13 as much as possible. But we gave them so much
14 slack, they're so lack of structure, they're so lax
15 in enforcing the rules until something happens, and
16 then all of a sudden they want to reel it back in.

17 The problem is, is when the rubber meets
18 the road, it's our folks that are the ones going
19 back and taking the housing units, and they're going
20 back in and trying to enforce the basic rules. The
21 basic rules.

22 And management decides that it's not worth
23 the effort for you to enforce the basic rules until
24 something subsequently happens, and then we try to
25 get back to square one. And my people get tired of

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1 getting whipsawed. It's okay for the inmate to do
2 this. Oh, shit, I got in trouble by the auditors
3 because I'm not enforcing that rule; therefore,
4 everybody put the inmates back to square one,
5 whenever it comes to enforcing, or pick a rule.

6 And yet you have the auditors come in. We
7 had mandatory grooming standards. You could go
8 through certain institutions; management wouldn't
9 enforce the grooming standards. You turn around and
10 try to document the inmates for it, the
11 documentation ended up in the trash.

12 Auditor would come through, see too many
13 inmates out of compliance, shake the warden's chain,
14 and all of a sudden that becomes a mission one. And
15 you get to go out there and deal with the person
16 that hadn't had to have a haircut in a year. So
17 it's just absolutely insane.

18 I have a gym, 249 beds, three officers,
19 triple-bunked. Whenever they triple bunk it, 249.
20 That place is a powder keg. We've had so many
21 incidents in that one. And, I mean, every day here
22 in California, day in and day out, we -- we're
23 driving on ice with bald tires.

24 CHAIRMAN WALTON: Commissioner Fellner?

25 COMMISSIONER FELLNER: Thank you all for

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1 testifying.

2 I have a number of questions.

3 Mr. Baumann, I'm delighted to hear that the
4 union actually supported the media access, because I
5 think access --

6 MR. JOE BAUMANN: Five times.

7 COMMISSIONER FELLNER: Five times.

8 And I hope you -- would you send us
9 whatever statements you have about media support for
10 the access? Because I think that's an important
11 part to have in the record, because I think a number
12 of us commissioners believe that transparency and
13 openness helps everybody, helps staff, helps
14 inmates, helps management. So that's good.

15 I wonder, though -- one of the points which
16 Professor Dolovich made and which we've heard,
17 actually, from many people is about overcrowding.

18 And I have heard -- and I don't know if
19 it's true or not -- that your -- that the union in
20 California opposes efforts that would reduce the
21 prison population. For example, they opposed
22 efforts to change the three strikes law so that the
23 third strike would have to be a violent strike
24 instead of a lower.

25 And I would welcome some clarification on

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1 your position on that, whether or not the State
2 should be taking steps to reduce the prison
3 population.

4 I totally agree with you on increasing
5 staff to deal with the population that exists, but
6 should the population be reduced and would that give
7 the State more -- similarly with -- I would -- then
8 like the others from the federal system -- I mean
9 one of the -- you can talk about either increasing
10 staff, or you could also reduce population.

11 In the federal prison, for example, there
12 are -- I think it's something like 24 percent are
13 nonviolent low-level drug offenders.

14 Do they need to be incarcerated? So I
15 would like to know your union's position, as well,
16 on what steps could be taken to address
17 overcrowding.

18 But if you would start.

19 MR. JOE BAUMANN: One of the issues I have
20 personally is, is I just had a friend of mine whose
21 24-, 25-year-old son got caught the second time high
22 on meth, breaking into a house with a gun. He got a
23 three-year suspended sentence, kicked right out the
24 door. And he's running the streets right now on a
25 three-year suspended felony sentence. No drug

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1 program at the county level because the county
2 doesn't want to put the money in the drug program.

3 COMMISSIONER FELLNER: So you agree there
4 needs to be more drug programs at the local level?

5 MR. JOE BAUMANN: I think the best way to
6 keep people out of the prison system is to deal with
7 them at the local level.

8 COMMISSIONER FELLNER: All right. But if
9 they're not -- if they're not, are there other
10 steps, though? Do you think that prison should be a
11 last resort and do you think there are steps that
12 could be taken in California to relieve some of the
13 population pressures now and has your union
14 supported efforts to relieve population pressures?

15 MR. JOE BAUMANN: At some points they have.
16 I think there are some mechanisms out there that
17 could reduce the prison population just strictly
18 giving the parole agents alternatives to returning
19 somebody to prison.

20 As it is right now, if you have a parolee
21 who has a mental health issue, doesn't make his
22 doctor appointments and doesn't take his medication,
23 what do you do with the person? You roll him up,
24 you send him back to prison. There's no
25 alternatives to that.

1 There are no alternatives for somebody who
2 has an anger management issue or a substance
3 abuse --

4 COMMISSIONER FELLNER: And you think there
5 should be alternatives?

6 MR. JOE BAUMANN: There should be.

7 COMMISSIONER FELLNER: Okay. Good.

8 MR. JOE BAUMANN: And, again, that's more
9 tools for the parole agent, which we represent, to
10 utilize versus sending them straight back to prison.

11 As it is right now, it's either you don't
12 do something or you send them back to prison. And
13 there's no middle ground in that. And a lot of that
14 relies on funding that was put in place for local
15 communities, local counties to do those programs
16 that's being siphoned off to good Lord knows where.

17 COMMISSIONER FELLNER: Can I get a
18 straight -- specific answer to the question of
19 whether your union supports -- supported change to
20 the three strikes law?

21 MR. JOE BAUMANN: I'm not the statewide
22 president, so I don't have the authority --

23 COMMISSIONER FELLNER. You don't know?

24 MR. JOE BAUMANN: -- I don't have the
25 authority to, even if I did know. And I don't know.

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1 COMMISSIONER FELLNER: You don't know or
2 you --

3 MR. JOE BAUMANN: I don't know.

4 COMMISSIONER FELLNER: Okay.

5 MR. JOE BAUMANN: Sorry.

6 COMMISSIONER FELLNER: Okay.

7 And Mr. Lowry and Mr. Ortiz, what are your
8 thoughts about reducing the federal prison
9 population as a way to handle some of the staffing
10 shortages?

11 MR. BRYAN LOWRY: First of all, the Bureau
12 of Prisons does not have a parole system, so there
13 is no such animal as parole within the federal
14 system.

15 Number two, most of these inmates with the
16 24 percent that you mentioned that are nonviolent
17 drug-related crimes, most of these inmates are
18 sentenced on mandatory sentencing laws. So with the
19 laws in place, I've really not seen any legislation
20 that my national union, AFGE, or I have really seen
21 that we could or -- support or not support that
22 would reduce or be able to, like a parole system,
23 let inmates out early without completing their
24 entire sentence.

25 COMMISSIONER FELLNER: Do you think it

1 would be a good idea for inmates to have parole in
2 the federal system?

3 MR. BRYAN LOWRY: Parole hasn't been around
4 for a very long time. So I really am not really
5 very knowledgeable on how the system would reduce
6 the number of inmates inside the prisons. But we
7 would support anything that would reduce the number
8 of inmates should we be able to get something passed
9 through Congress.

10 COMMISSIONER FELLNER: Okay. Let me ask
11 the three of you as well.

12 How well do you -- one of the things that
13 we have heard repeatedly is that prisoners do not
14 report sexual assault or other problems for a number
15 of reasons, some of which have to do with ego, some
16 of which have to do -- and shame, some of which have
17 to do with fear of retaliation from the inmates
18 against whom they are talking, and some of which has
19 to do with the sense that it doesn't do any good.
20 You file a grievance. It gets tossed in the trash.
21 Officers aren't paying attention. Nothing happens.

22 And I wondered if you could say to me how
23 in California and how in Beaumont, how you have made
24 sure -- if you have been able to create effective
25 grievance and reporting mechanisms and what -- and

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1 what is required to make for effective grievance
2 reporting, especially around sexual abuse.

3 MR. JOE BAUMANN: And the issue I have is
4 anytime I file -- or my local files a grievance
5 regarding policy, the policy decision mechanism with
6 the department never sees it. It becomes a labor
7 relation issue.

8 COMMISSIONER FELLNER: But I want to talk
9 about when an inmate wants to report -- or present a
10 problem having to do with sexual abuse, what are the
11 mechanisms in the facilities in California to enable
12 that -- to enable an inmate to report safely and to
13 have it be responded to by staff, and if they are --
14 are they functioning well, and if they're not
15 functioning well, what is required to have those
16 systems function better?

17 I'm not talking labor. I'm talking inmates
18 are being abused, and they file -- we heard -- you
19 were here earlier. We heard about, you know, in the
20 Dillard case how he filed a grievance, and it was
21 lost for four years.

22 MR. JOE BAUMANN: And that happens with my
23 grievances too.

24 But back to the issue at hand is, is, you
25 know, the Office of the Inspector General, the

1 Bureau of Independent Review have an 800 number that
2 accepts collect calls from each one of the
3 institutions as a last-step measure. The normal
4 inmate appellate process with filling out a written
5 602 is one method. That's usually not the best
6 method.

7 The inmate going up to a supervisor or
8 manager, going up to medical staff, and the medical
9 staff or the supervisor doing the incident report
10 for or on behalf of the inmate is another mechanism.

11 Anytime that there's an accusation of
12 sexual misconduct from an -- towards an employee,
13 automatically the Bureau of Independent Review is
14 pulled in. If it's an inmate involved, totally
15 separate story.

16 One of the problems you have, though, is
17 confidentiality of the investigations. You've got
18 no definitive electronic file security policy or
19 procedure in the department. You've got computers
20 all over the place that have open access, that you
21 type your report up and save it to the hard drive,
22 and anybody can come along and read it. Anybody can
23 come along with one of those little memory sticks
24 and download it and take it home with them.

25 So one of the things --

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1 COMMISSIONER FELLNER: So I'm not sure if
2 I'm hearing you say --

3 MR. JOE BAUMANN: There's not an effective
4 policy --

5 COMMISSIONER FELLNER: For inmates to have
6 their grievance -- to make complaints or concerns
7 expressed and have them responded to?

8 MR. JOE BAUMANN: I don't feel that there
9 is.

10 COMMISSIONER FELLNER: Okay.

11 And in the federal -- thank you.

12 And in the federal system?

13 MR. ISAAC ORTIZ: As far as when they get
14 injured during the rape, they don't say they were
15 raped. They say, hey, I have bleeding hemorrhoids,
16 and we know what that means.

17 And, like I say, we have a lot of female
18 officers there. And the way their mentality is with
19 the female officers, they're more apt to say
20 something more personal of what happened.

21 But the confidentiality is very difficult.
22 To separate the inmate is pretty common to do. What
23 we do is, if, for instance, he was raped, we handle
24 it very carefully. And we call for medical. They
25 see him, talk to him a little bit. But, see, it's a

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1 contract medical we have. So they're not really
2 sensitive to inmate's needs because they're
3 understaffed, they're contract workers, they're not
4 happy, they don't want to be in there.

5 I don't know if I told you, but contract
6 custody and contract any service doesn't really work
7 in the federal system. Except for the
8 administration makes a lot of money from it. But
9 the inmate is not taken care of.

10 Now, the confidentiality, my suggestion is,
11 is that -- we have telephones in there. And if they
12 have a code that they can call outside the complex
13 and report, I was raped tonight, I requested medical
14 attention, I did receive it, however, I am not safe.
15 With the process of reporting it within the
16 institution or the complex, it isn't safe.

17 COMMISSIONER FELLNER: In your complex at
18 night if somebody's raped, can they get a rape kit
19 within a few hours?

20 MR. ISAAC ORTIZ: Well, we don't say "rape
21 kits." I don't think the administration will say it
22 either. They just get medical attention.

23 COMMISSIONER FELLNER: Well, do they get a
24 rape kit during that medical attention?

25 MR. ISAAC ORTIZ: Yes, ma'am.

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1 COMMISSIONER FELLNER: Okay. You have 24/7
2 medical care that can provide that?

3 MR. ISAAC ORTIZ: Yes, they do. But with
4 the sheriff's service there's always a nurse on call
5 or someone there, depending on the hours.

6 COMMISSIONER FELLNER: And do you have any
7 thoughts about the grievance systems for inmates to
8 be able to present their concerns or complaints or
9 whether there should be confidential reporting,
10 Mr. Lowry?

11 MR. BRYAN LOWRY: I do have some comments
12 on that.

13 First of all, I believe that the procedures
14 that the Bureau of Prisons has in place are good
15 procedures. The fact is, though, is that because of
16 money and funding, our training has lacked. Most of
17 these new officers get trained by the senior
18 officers on shift. And in some places we've reduced
19 that number, and now they have nobody training them
20 like we did before to be able to talk these
21 scenarios out.

22 If an inmate comes to a staff member and
23 reports that he's been raped, sexually assaulted, or
24 assaulted, period, our first response is to isolate
25 the inmate immediately, to keep our eyes on it. To

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1 call for assistance from probably supervision is
2 what we're going to do, the first thing, and then
3 we're going to separate the inmate from the
4 population.

5 We're going to try to find out what
6 happened. We're going to get them the medical
7 attention that they need at that time. And then if
8 we find out exactly who assaulted them, we're going
9 to isolate them as well.

10 We have places that we put the inmates.
11 It's really a protective custody until we can run a
12 proper investigation to get all the facts to ensure
13 that it did, in fact, happen.

14 Now, one thing I want to discuss that you
15 asked Mr. Ortiz, it was about medical care. About
16 two or three years ago the Bureau of Prisons decided
17 they no longer wanted to pay for medical employees
18 to be on site from midnight to 6:00 in the morning.

19 So between midnight and 6:00 in every
20 federal prison there is nobody there that could even
21 look at an inmate.

22 If something happens to an inmate
23 medically, whether it's assault or it's a heart
24 attack or whatever, the first response is to call
25 outside medical care and have them send an ambulance

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1 and come pick the inmate up.

2 There are staff that are on call, but most
3 of these staff live 10, 20, 30 -- some 50 miles away
4 from the location in which they work. So coming
5 back into the institution would take an hour, two
6 hours in some cases. So the operations lieutenant,
7 which is only -- the only supervisor generally on
8 shift at that time of the morning, is going to
9 probably call them. And they're going to say, call
10 an ambulance, and that's pretty much what would
11 happen.

12 Now, if we did have staff come back in and
13 the lieutenant who's on duty tells the medical
14 staff, the inmate's reported allegations of sexual
15 assault, I'm sure that other administrators at the
16 local prison are going to be called at this time.
17 But it's still going to probably be at least an hour
18 and a half to two hours before that inmate even sees
19 any medical care, especially with a sexual assault
20 versus a heart attack situation.

21 I think an inmate will probably go out
22 faster under a heart attack situation than he would
23 a sexual assault.

24 COMMISSIONER FELLNER: If I may ask one
25 more question.

1 MS. SHARON DOLOVICH: Can I interrupt? I
2 wanted to say some things about the first question
3 that you asked.

4 COMMISSIONER FELLNER: Sure.

5 MS. SHARON DOLOVICH: The question was
6 about whether -- generally speaking, we should be
7 taking steps to reduce the population in the prisons
8 and also what CCPOA's position is.

9 So just to refresh Joe's recollection,
10 CCPOA was actually a big supporter of the initial
11 ballot initiative of three strikes, which, as your
12 comments indicate, you recognize is much more severe
13 than in any other jurisdiction.

14 Here in California the first two strikes
15 have to be from a list of serious and/or violent
16 felonies. And, in fact, that list is already more
17 capacious than in other states. And once you have
18 two strikes, any other felony can be a third strike,
19 giving you a mandatory minimum of 25 years.

20 COMMISSIONER FELLNER: Including a
21 nonviolent --

22 MS. SHARON DOLOVICH: Right. Because it
23 could be a misdemeanor that is charged as a felony.
24 So petty theft with a prior can be a third strike.

25 So Prop 66 proposed to basically modify

1 what I consider to be the most objectionable
2 features of the law and bring it more in line with
3 other states. CCPOA was one of the funders of the
4 "No on 66" campaign. So they actually took a
5 position against the reforms.

6 So just a couple of other things just on
7 the general point. I believe that the article I
8 circulated with that photograph also describes
9 efforts now to establish a sentencing commission in
10 California.

11 There's starting to be some recognition
12 that the punitive policies of the last two -- 15
13 years, maybe, have really taken a serious toll on
14 the prisons. So one of the things that's being
15 floated is a revision of three strikes.

16 Also, you know, Prop 36 was supposed to
17 divert low-level drug offenders. In fact, there's
18 been underfunding for the treatment programs, so a
19 lot of those offenders don't get the help they need.
20 Then they're back in the prison system pretty
21 quickly.

22 We also have the problem that Joe mentioned
23 about re-incarcerating violators on technical parole
24 violations.

25 The other feature that I think bears

1 mentioning is -- and this is true in the federal
2 system as well as the California system and I'm
3 guessing in other states also -- a really high
4 percentage of incarcerated offenders in the jails as
5 well as the prisons have mental -- serious, serious
6 mental health issues. And they are much more
7 appropriately dealt with in the mental health
8 system. Part of the reason they're not is because
9 of the deinstitutionalization that took place
10 starting in the '80s.

11 So if you dealt with those four populations
12 that I mentioned -- the nonviolent or minor felony
13 third-strikers, the low-level drug possession, the
14 prisoners with mental health issues, and the
15 technical parole violators -- you would go quite
16 far, I think, to reducing the prison population in
17 ways that would facilitate the concerns that we're
18 talking about.

19 Just one other piece of this. It was
20 mentioned in terms of the federal mandatory minimum
21 sentences. The federal system is the one prison
22 system in the country that's growing at a rate
23 consistent with the 1990s. It's now the biggest
24 prison system in the country. And I think the
25 primary reason is the mandatory minimum sentencing

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1 regime that started in 1986 with the Anti-Drug Abuse
2 Act and then was instantiated into the federal
3 sentencing guidelines.

4 COMMISSIONER FELLNER: At this point it's
5 also immigration.

6 And I hate to cut you off, but this is all
7 stuff --

8 MS. SHARON DOLOVICH: Sure.

9 COMMISSIONER FELLNER: Yeah.

10 I wanted one more question to Mr. Baumann.
11 That was the one.

12 Did your union -- did the CCPOA support --
13 California has led its own sort of state PREA bill.

14 MR. JOE BAUMANN: And I don't know off the
15 top of my head.

16 COMMISSIONER FELLNER: Would you find out,
17 please, and let us know whether your --

18 MR. JOE BAUMANN: Give you a call. Yeah.

19 COMMISSIONER FELLNER: If you can send it
20 in, whether the union supported it.

21 CHAIRMAN WALTON: Commissioner
22 Struckman-Johnson.

23 COMMISSIONER STRUCKMAN-JOHNSON: Just thank
24 everybody for coming today. Very interesting
25 testimony. Good to hear all the different

1 perspectives.

2 To the professor, what do you think of the
3 opinion expressed that the inmates run the prisons?

4 MS. SHARON DOLOVICH: I think in many cases
5 there is something to that. I think there's a kind
6 of equilibrium that is maintained where the prison
7 officials sort of get cooperation in areas that they
8 need to maintain the security of the prison. And in
9 exchange they defer a lot to -- a lot of the inside
10 processes and dynamics, a lot of black market stuff
11 that actually goes on.

12 So, I mean -- I think part of it -- these
13 things are just exacerbated by the problems we're
14 talking about today, like overcrowding, for example,
15 and inadequate classification procedures so that
16 prisoners that ought not to be housed together are
17 housed together. But I think there's something to
18 it.

19 COMMISSIONER KANEB: Thank you all for your
20 candor. It's very helpful. Thank you. Thank you
21 for coming also.

22 I will say, I admire the candor of the
23 federal people, those who described their problems.
24 I regret it very much for the United States, for you
25 guys, for the inmates.

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1 As you know, our Commission has a mandate
2 to do a number of things, and one of the things
3 we're not supposed to do, though, is to propose
4 solutions that cost a lot of money. Maybe a little
5 money, but not a lot of money.

6 However -- and I'm speaking for myself, but
7 I don't think I'm alone -- what we can recommend may
8 be somewhat constrained, but we can make points and
9 we certainly will make points about funding levels,
10 funding for staff, funding for training, funding for
11 technology.

12 And the time will come in the iteration of
13 our process when we may well be contacting you
14 asking for support, political support. And you'll
15 have to decide what you want to do at that point.

16 Again, I'm speaking for myself. This is --
17 I'm one commissioner.

18 Professor Dolovich, you talked about two
19 things that I found very interesting. One is your
20 belief that the U.S. ought to go at least partway
21 towards the Canadian system of segregating the
22 officer population from the inmates by sex in the
23 case of female prisoners.

24 Do you think that has significant
25 potential -- significant political support?

1 MS. SHARON DOLOVICH: It's hard to say. I
2 anticipate two kind of responses perhaps related to
3 particular constituencies in opposition. The first,
4 I think, will come from -- I'm, you know, interested
5 to get my colleagues up here, their sense of this
6 too, but from male officers who object to being shut
7 out of contact positions in female prisons.

8 And the second, I think, would come from a
9 more broad-based notion in the American political
10 culture of a commitment to formal equality. So the
11 response would be, well, fine. If you keep male
12 officers from contact positions in women's
13 facilities, you should also keep women officers from
14 contact positions in male facilities.

15 So I think neither of those objections
16 would, you know -- is a reasonable one. In terms of
17 male officers in female facilities, there are a
18 couple of different legal objections that could be
19 raised. I talk about this at some length in my
20 written testimony. The first is an equal protection
21 claim, that this is gender discrimination, in
22 violation of the constitution.

23 And there I think it's pretty clear that
24 the objection will not fly. Gender is an
25 intermediate -- gets intermediate scrutiny, gender

1 discrimination, which requires there to be a
2 compelling governmental interest and -- and a
3 substantial relationship between the objectives and
4 the restriction.

5 And I think it's clear, given what we know
6 about the source of the threat to female prisoners
7 in terms of unwanted sex, that the government could
8 easily make out both of those prongs, a government
9 that wanted to defend that policy.

10 The other possible objection is from
11 Title 7, but, again, as I mentioned in my testimony,
12 there's an exception in Title 7 for what they call
13 bona fide occupational qualifications. And, again,
14 given what we know about the threat of sexual
15 violence and other unwanted or coerced sex for
16 female prisoners from male officers, I think you
17 could satisfy the Title 7 concern.

18 As far as the kind of concern about formal
19 equality goes, I think it's based on a false
20 equivalence because the objection here is simply
21 that the central source of the threat -- I know I'm
22 repeating myself, but the central source of the
23 threat to female prisoners comes from male
24 correctional officers. It's simply not the case
25 that the central source of the threat to male

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1 prisoners in terms of prison rape comes from female
2 officers, as we know it comes from other inmates.

3 And, in fact, again, I would be interested
4 to know what my colleagues think. But my sense from
5 talking to some prisoners and also prison officials
6 and also just seeing what I've seen, at least in my
7 experience in the L.A. County jail where I spent
8 some time last summer just observing, is that I
9 think that women officers in male facilities can
10 sometimes do better at defusing tensions and being a
11 sympathetic ear to try to ferret out problems.

12 So I actually think the false equivalence
13 would not only undermine our ability to protect
14 female prisoners, but it would also undermine our
15 ability to create a safe atmosphere for male
16 prisoners.

17 CHAIRMAN WALTON: Can you comment on what
18 the union's position would be on -- upon that --

19 MR. JOE BAUMANN: No. Personally, I don't
20 think there's a problem with it, except when you go
21 to the two Madera institutions. And the only thing
22 I see is logistics. You've got two institutions
23 there that are 85 percent male staff. And if you
24 turn around and pink-slipped everybody right now,
25 you wouldn't have enough staff there to run the

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1 place.

2 So, I mean, they went in and built these
3 beasts, these just ungodly sized institutions, went
4 out into the local community, recruited who they
5 could recruit. And I don't think you could go in
6 the local community to staff the place back up if
7 you made the decision to do that.

8 I would hope in the future if the
9 department does build more facilities, that they
10 would build smaller ones, particularly for the
11 female inmates. It seems to be a lot easier to
12 manage versus 4,000 inmates in a huge place, like
13 either one of the Maderas.

14 COMMISSIONER KANEB: Mr. Baumann, I hadn't
15 quite finished yet. And I will then follow the
16 judge with this because I wanted to ask you this.

17 This morning one of our witnesses -- and I
18 don't know if you were -- were you here this
19 morning?

20 MR. JOE BAUMANN: Briefly.

21 COMMISSIONER KANEB: All right. A
22 gentleman from Connecticut extolled the virtues of
23 having female staff and male staff in both female
24 and male prisons, felt it was good change,
25 productive, et cetera.

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1 I'm -- if you feel uncomfortable giving a
2 personal opinion, I guess you'll say so. But
3 assuming that problems like you've got a lot of male
4 officers in female prisons now and it's a big
5 logistical problem, a hardship for some of them or a
6 lot of them, assuming there was a period that -- you
7 know, of transition -- it doesn't have to happen
8 all -- how would you feel about Professor Dolovich's
9 idea?

10 MR. JOE BAUMANN: You know, I worked the
11 mental health unit at my institution for three
12 years, the female mental health unit. I had a
13 female partner. There were 144 inmates and two
14 staff. And there were times where I could get the
15 inmate population to do things that they would never
16 do for my partner and vice versa. And part of it
17 is, is the individual. I mean, the training, their
18 credibility with the inmates, the interaction with
19 the population.

20 And there were other times where I,
21 frankly, couldn't get them to do a damn thing, and
22 she could usually end up getting them to do whatever
23 it was en masse that we needed done.

24 COMMISSIONER KANEB: Okay. So it worked in
25 that particular case. But I'm asking you --

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1 MR. JOE BAUMANN: Well -- and I'm trying to
2 kind of flare it back out.

3 And it's just like anything else. It's the
4 people that you put into the job as much as anything
5 else.

6 COMMISSIONER KANEB: I understand that.

7 MR. JOE BAUMANN: As far as taking a grace
8 period to come into compliance, I don't know. You
9 guys would have to figure out or someone would have
10 to figure out what the right level of male staffing
11 is in the institution. It's not necessarily a bad
12 thing.

13 COMMISSIONER KANEB: Okay.

14 Professor Dolovich, one last.

15 You said we need to create -- I'm
16 paraphrasing you -- incentives for officers not to
17 turn a blind eye to prisoner-on-prisoner forced sex.
18 Would you give us some ideas?

19 MS. SHARON DOLOVICH: Well, by that I meant
20 that it's not enough to simply think about how to
21 protect the vulnerable inmates, which is obviously
22 urgent, but also to keep in mind that if you are
23 disrupting the dynamics of protective pairings, you
24 could create a situation where staff would be at
25 greater risk.

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1 So I guess I was thinking, you know, of a
2 couple of things. One is just, you know, the
3 efforts to disrupt those pairings would also have to
4 be undertaken with a broader effort to meet staffing
5 level needs that we've been talking about, even to,
6 you know, rearrange housing.

7 For example, if you were going to separate
8 out the known predators, as they try to do in
9 San Francisco County, you know, a policy of
10 single-celling those prisoners so they could be more
11 easily managed and, therefore, less likely to
12 assault the guards would be, I think, one wise piece
13 of it.

14 I think it would have to be a kind of
15 panoply of approaches, all of which would address
16 the security concern.

17 COMMISSIONER KANEB: I understand that,
18 but -- so I guess I misinterpreted your use of the
19 word "incentives." Maybe I misheard you.

20 You don't have in mind any particular
21 incentives for the officer to -- instead of turning
22 a blind eye if he were so inclined, to be an act
23 of -- actor in exposing if he suspects sexual abuse?

24 MS. SHARON DOLOVICH: So I may have -- I'm
25 not sure if this speaks to the question that you

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1 were thinking, but either I misused the term or I
2 used it in a misleading way when I was talking. Or
3 I was thinking about the larger context.

4 I do think that my suggestion about
5 creating a statutory obligation with a cause of
6 action and right of recovery on a negligence
7 standard would create the incentives in the
8 institution.

9 COMMISSIONER KANE: Yes. Yes. We
10 understand that. Thank you.

11 CHAIRMAN WALTON: For the two federal
12 officials, what are your views? What do you think
13 the position of your union would be if there was a
14 policy of only female guards having contact with
15 female inmates?

16 COMMISSIONER FELLNER: You mean in housing
17 units?

18 CHAIRMAN WALTON: In housing units, yes.

19 MR. BRYAN LOWRY: Let me start off by
20 saying this. When an employee is hired by the
21 Bureau of Prisons they go through a one-year
22 extensive background to determine their integrity
23 and worthiness to be an employee for the Federal
24 Government.

25 So, I mean, it's an extensive background

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1 that looks into probably their last ten years'
2 history on their jobs. They go out and talk to your
3 neighbors. They interview anybody and everybody.
4 They look into your personal finances.

5 We think that under that, we try to
6 maintain and hire the best staff available to work
7 in the prisons. We know that sometimes things
8 happen and employees go awry. But it's not only
9 male staff with female inmates; it's female staff
10 with male inmates and it's male staff with male
11 inmates.

12 So under the circumstances of today's
13 world, I think that would be a discriminatory
14 practice, and I don't think that you could ever
15 disqualify somebody who's qualified to work the
16 position to say that you can't hire them if they can
17 do the job. It's kind of like a practice -- and I
18 don't want to go too far into it, but like saying
19 that females can't go into a combat situation in the
20 military these days and drive a vehicle.

21 So I don't agree with that perspective. I
22 believe that we hire the best staff, and we hope
23 that our staff are honest and do their job and they
24 don't get involved with misconduct with inmates.
25 And that's what you have to hope for with the

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1 integrity and the background checks in the staff we
2 hire.

3 CHAIRMAN WALTON: Mr. Ortiz?

4 MR. ISAAC ORTIZ: I don't believe she's
5 correct in that theory because I work it and I know
6 a lot of female officers that have strong
7 communication skills. And I don't see a problem
8 with them working with male inmates.

9 And my personal experiences working with
10 female inmates is that it's not a problem. I don't
11 see them in a sexual way. They're inmates, and I am
12 providing custody during my shift for them. And if
13 they have problems, they're able to come to me in a
14 professional manner.

15 If they choose not to, that's why I have a
16 supervisor, and I will call him to come down and
17 take a look at this female inmate that has other
18 ideas than needing help, but help for other reasons.

19 So, you know, there's a theory about what
20 you think should happen by studies and surveys and
21 articles and what you see in the paper and the news,
22 but unless you've worked in the environment for an
23 extensive time, the theory of that, I don't think it
24 would work.

25 That's my opinion.

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1 COMMISSIONER KANEB: I think you misstated
2 her position.

3 MS. SHARON DOLOVICH: Yes.

4 COMMISSIONER KANEB: She is not advocating
5 the removal of female staff from male prisons.
6 She's advocating only the removal of male staff from
7 female prisons in a contact situation.

8 I will just -- my personal opinion,
9 frankly, I would worry about a male officer who is
10 in a female prison and violently objects to being
11 removed and put into a male situation, I mean,
12 assuming that the family situation and everything
13 else is the same. I would worry about that guy.
14 So...

15 MS. SHARON DOLOVICH: Can I just have a
16 quick response to Mr. Ortiz and --

17 COMMISSIONER FELLNER: Actually, you know,
18 I think we -- because it's very well laid out in
19 your paper, and we actually have a lot of other
20 material.

21 COMMISSIONER STRUCKMAN-JOHNSON: Please.
22 Go ahead. I would like to hear it.

23 COMMISSIONER FELLNER: I want to hear her,
24 but I wanted you to include in yours -- you might
25 want to refer to Michigan, which I'm sure you're

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1 familiar with, and what has happened -- and what
2 happened there.

3 MS. SHARON DOLOVICH: So I don't actually
4 know the details of what happened in Michigan.
5 So -- I know the case you're referring to, but I
6 haven't looked at it closely.

7 Let me just say very briefly that I think
8 it's absolutely right that there's also problems
9 with female officers and male inmates and male
10 officers and male inmates. So the suggestion that
11 I'm making is not supposed to be a kind of cure-all
12 magic pill.

13 It's simply to say if we can lay out the
14 levels of risk and given the research that we have
15 that I think is pretty clear on this point,
16 notwithstanding Mr. Ortiz's suggestion, I think it's
17 simply one policy approach that could take a large
18 subset of the problem off the table.

19 That's all I wanted to say.

20 COMMISSIONER FELLNER: And do you want to
21 comment, also, about pat searches?

22 MS. SHARON DOLOVICH: Yeah. I mean, that
23 seems to me a no-brainer. And I think a lot of the
24 concerns that would be leveled against my broader
25 suggestion have been leveled on a smaller scale in

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1 that context.

2 But if you actually read testimony of
3 female survivors of sexual abuse and even female
4 prisoners who take it almost as a given that they're
5 going to be groped by male officers during pat
6 searches, it seems to me that that -- if anything,
7 that piece of it should be a quite easy policy to
8 implement in terms of prohibition of men
9 pat-searching women.

10 COMMISSIONER FELLNER: Because the
11 representative from Connecticut -- I don't remember
12 if he said it in testimony today or when I was
13 talking with him yesterday that male officers in
14 Connecticut can do pat searches of women.

15 And I think one of the things I would
16 ask -- I would encourage your reflection on is I
17 don't know if in the federal system, but certainly
18 in state systems, 60 or 70 percent of the females
19 have histories of sexual and physical abuse from
20 men.

21 So a pat search by a man or sexual
22 aggression by a man is responded to differently, has
23 a different emotional and psychological impact than
24 it would for a man who -- even a man who gets
25 approached by a female, improper as that is and it

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1 should be sanctioned and not allowed, the impact is
2 likely to not be as grave.

3 But since we're running -- I have two
4 questions for all of you.

5 One is you mentioned that when someone
6 makes a complaint of rape or sexual abuse, an
7 inmate, you put the inmate in protective custody
8 right away. I think that's what you said.

9 MR. BRYAN LOWRY: I stated that.

10 COMMISSIONER FELLNER: Right.

11 And I was curious because the witness from
12 Connecticut said they had changed their policy
13 because they were aware that that was a disincentive
14 for people to come forward because if someone's
15 trying to finish their GED or they're trying to
16 finish a course which will enable them to get
17 paroled, if they -- of course, they don't have
18 parole in the federal system, but there are real
19 disincentives to wanting to be put in protective
20 custody, which is, of course, the same as being in
21 segregation in terms of all your loss of privileges,
22 programs, and whatnot.

23 I think it's also true in California that
24 you -- the complainant -- the victim or the alleged
25 victim will be put into protective custody.

1 Would it not be possible to simply -- and
2 I'm curious, in your experience as line officers,
3 would it not be possible to simply move the victim
4 or the alleged perpetrator to a different housing
5 unit? Do you have to put -- do you think that
6 there's not some other way besides putting the
7 victim into protective custody since that does seem
8 to be a disincentive to come forward?

9 MR. BRYAN LOWRY: I think the disincentive
10 would be outweighed by the fact that we would be
11 liable if an inmate made a report to us on sexual
12 misconduct and we didn't isolate him on an open
13 compound. Because even if you moved housing units,
14 there are times when every one of these unit doors
15 are wide open during movement times and then in the
16 evening for probably a couple hours during main line
17 where inmates could have access or do have access to
18 other inmates.

19 There are times on the yard, on the open
20 compounds, if you have 2,000 inmates incarcerated in
21 a prison, I know at least in the summer months you
22 may have 1300 inmates on the recreation yard at one
23 time.

24 So by allowing that inmate who made the
25 report to remain on the compound, you're putting him

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1 in jeopardy and could possibly be fatal.

2 So I think that we don't have an
3 alternative but to isolate and put them in
4 protective custody.

5 Now, the alternative would be if there is
6 truth after the investigation to the matter, then
7 the inmate could possibly be moved. But if you put
8 him back on the open compound and other inmates
9 think he's reporting stuff to staff, you've put him
10 in grave danger.

11 That's my opinion. Especially as the
12 security levels increase in the prisons in a higher
13 security level because the inmate's going to be
14 considered a snitch.

15 COMMISSIONER FELLNER: Is there any way
16 around that? Does the inmate, then, have to spend
17 the rest of his time in protective custody? We're
18 well aware of this snitch problem that they get
19 targeted. How do we -- we don't want to recommend
20 something -- we want to deal with this problem. You
21 should be able to come forward and somehow get help
22 without facing being targeted as a snitch.

23 How do we -- what can you recommend to us
24 we could do?

25 MR. BRYAN LOWRY: One thing that you need

1 to understand are there's two types of protective
2 custody inmates. There are the confirmed ones and
3 there's unconfirmed.

4 Confirmed is a sexual assault happens and
5 it's been proven to happen and it's confirmed that
6 he's got to be separated from certain inmates or
7 groups of inmates, or her have to be separated.

8 Unconfirmed is an inmate makes an
9 allegation or comes to the staff and says, I'm in
10 danger and can no longer stay on the compound, but
11 won't say what the alleged incident was or who
12 violated the inmate's space.

13 So, I mean, we have those two types of
14 inmates.

15 And if an inmate, you know, based on the
16 facts doesn't want to come report it, there's
17 nothing we can do.

18 Now, our training dictates us in procedures
19 not only in -- if an inmate's been sexually
20 assaulted, also monitoring inmates to see if they're
21 suicidal, which is two things you watch for on their
22 behavior: not prevalent with the other inmates or
23 communicating with other inmates, not going to eat,
24 not going to shower, losing weight. Things that we
25 monitor on a daily basis by knowing the inmates and

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1 the inmate populations and watching them every day.

2 These are things we pick up that we're able
3 to report if we notice them. I mean, that's things
4 that we're trained to do.

5 And with that, I think an inmate that's
6 been sexually assaulted, he's either going to report
7 it or not. If you have a suspicion of it, it's
8 always the better part of your job to report it
9 immediately to your supervisors or to a
10 psychologist.

11 Every institution has a psychology
12 department there to be able to report these matters
13 to, for them to look into it further, to be able to
14 talk to the inmate to see if something is really
15 going on.

16 COMMISSIONER FELLNER: But if it's
17 confirmed this person was raped by, let's say, a
18 gang member, what do you do, then, after you -- you
19 move them to a different facility? How do you
20 guarantee their security afterwards if they're known
21 now as a snitch?

22 MR. BRYAN LOWRY: Well, I think there's
23 going to be twofold. It depends on how many inmates
24 may have been involved here. And, number two, the
25 psychology department will play a role in the fact,

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1 would the inmate feel safe going back out on the
2 compound as well? Do these inmates know that he
3 actually made an allegation, and does that inmate
4 feel any danger going out there?

5 And that's a key we have to rely on too,
6 that the inmates have the feeling that they may not
7 be safe out on an open compound.

8 COMMISSIONER FELLNER: And then what do you
9 do?

10 MR. BRYAN LOWRY: Well, if they don't, we
11 wouldn't want to keep the inmate incarcerated in a
12 separated area, isolated area for 25 years if that's
13 how much time. We'd probably have to transfer him
14 to another location where they could go on an open
15 compound.

16 And maybe in some cases, depending on what
17 he did, if it was nonviolent, I know in cases they
18 may even lower his security level where he could go
19 to an institution that he may not perceive or the
20 inmates may not consider or he may not feel
21 threatened.

22 COMMISSIONER FELLNER: Mr. Baumann, do you
23 have any reflections on this question from the
24 California experience?

25 MR. JOE BAUMANN: No. And one of the

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1 problems I see is, is when you work the process out
2 to the end and there's a determination that there's
3 going to be criminal prosecution, the person's
4 name's out there -- or the victim's name's out there
5 again.

6 The size and variety of population in most
7 of our institutions, you don't really have a choice
8 to leave them in the facility that they're at
9 because you've got -- you know, the average yard
10 here is 1300 inmates. So how do you protect that
11 person whenever he stays?

12 The suspect ends up going to a higher
13 custody facility or out to the county jail for
14 prosecution. You can't really leave him behind
15 where all of that person's criminal associates have
16 access to him.

17 Is there a better way of doing it? I have
18 absolutely no idea. I mean, bigger minds than mine
19 have thought it over for a hundred years and haven't
20 come up with a better solution.

21 COMMISSIONER KANEB: Jamie, you may not
22 have been in the room when the fellow from
23 Connecticut said what they do in Connecticut is they
24 isolate the suspected predator.

25 COMMISSIONER FELLNER: That's what I asked

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1 them. That's exactly what was my question.

2 COMMISSIONER KANEB: All right. Then I
3 missed that. I'm sorry.

4 CHAIRMAN WALTON: But I guess you're saying
5 that may not be adequate because many of the
6 perpetrators may have close connections to other
7 cohorts who will retaliate on behalf of the
8 perpetrator.

9 MR. JOE BAUMANN: And especially whenever
10 you get into issues like prostitution, forced
11 prostitution, that type of serial abuse.

12 COMMISSIONER FELLNER: Gangs.

13 MR. JOE BAUMANN: Yeah. Or whatever term
14 you want to use, whenever you have serial abuse by
15 numerous suspects or numerous people, you can't
16 leave that person there. It's not safe for them at
17 all.

18 COMMISSIONER FELLNER: Can I ask one other
19 question since we have time?

20 I wondered what your opinion was about
21 having separate housing units for men -- let's
22 address it in this case men who are either gay or
23 who would seem to be more at risk or more vulnerable
24 by virtue of their stature because they're
25 transgender or whatever.

1 I mean, there are some jails that have --
2 including L.A. County jail which has a separate unit
3 for gay men. And does it have a separate for
4 transgender? I can't remember.

5 MS. SHARON DOLOVICH: They're all in one.

6 COMMISSIONER FELLNER: They're all in one.

7 Do you think that is something that more
8 prison system -- either the federal prison system or
9 California should have as a way of protecting the
10 more vulnerable, younger, gay, transgender people
11 from being preyed upon by older, bigger inmates?

12 MR. JOE BAUMANN: When I worked at Chino, I
13 went up to Vacaville. And I don't remember why the
14 heck I was up there. Oh, you know what, it was when
15 I was going through the academy for training.

16 Anyway, and they had a unit at the time
17 that they had segregated. And I don't know all the
18 terms, but preoperative transgenders that they
19 referred to as the "bunny hutch."

20 And they kept those inmates housed separate
21 from the rest of the population but still allowed
22 them out to program and to eat and all the other
23 things and socialize.

24 And just that short time I dealt with that,
25 my observations, for what they're worth, was it was

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1 almost meaningless. They were protected basically
2 from 10 o'clock at night to 6:00 in the morning.
3 Once they were out in the general population, it was
4 kind of a free-for-all.

5 In fact, if I recall right, a couple of
6 weeks afterwards they had a fight where one of the
7 inmates in the general population actually
8 decapitated one of the preoperative individuals in a
9 three-way love triangle. I'm -- anyway, but
10 decapitated the inmate.

11 So if you're going to segregate them, you
12 almost have to segregate them to where they have
13 their own, for lack of a better term, society or
14 their own yard away from the rest of the general
15 population. You can't have them kind of bouncing
16 back and forth.

17 COMMISSIONER FELLNER: Okay. Do you have
18 any thoughts about this?

19 MR. ISAAC ORTIZ: I've just got a problem
20 with that because not every inmate that's raped is
21 gay.

22 COMMISSIONER FELLNER: I didn't say that.

23 MR. ISAAC ORTIZ: I know, but -- and I
24 understand. I think they should be, you know, in a
25 separate -- but we have a problem with the type of

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1 facilities we have available to be able to separate
2 them like that. Unless we change our structure, the
3 way our units are put together, then, yeah, I would
4 support something like that, that they would
5 separate them in order for their safety.

6 And then we already know the situation
7 they're in. And when they're in that unit, we know
8 who doesn't belong there. But we don't have the
9 coverage to monitor the type of traffic that comes
10 in and out, but I think that would be a good idea if
11 that was to happen.

12 CHAIRMAN WALTON: If there's nothing
13 else --

14 Yes.

15 COMMISSIONER STRUCKMAN-JOHNSON: Just the
16 point, we were talking about the problems of
17 male-male, female-male, male on female. Just to
18 remind everybody that there are predatory problems
19 with female-female staff. And there is evidence
20 that female inmate on inmate can in certain
21 facilities be a problem.

22 CHAIRMAN WALTON: Okay. Well, we thank
23 you, as we have with all the other panels, for your
24 candid testimony. I'm sure it will be very helpful
25 to us. And to the extent we ask for additional

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1 information, we'd appreciate if you'd get it to us.

2 Thank you.

3 These proceedings are adjourned.

4 (TIME NOTED: 3:23 p.m.)

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