training -- that's one reason why we have a 16-week academy and background investigations. We have a preemployment mandatory psych screen.

The formation of the Office of Inspector General was based on a bill that we sponsored. We've supported numerous media access bills that have been vetoed by the last two governors.

So anyway, that concludes my testimony.

CHAIRMAN WALTON: Thank you very much.

Professor.

MS. SHARON DOLOVICH: Chairman Walton and members of the Commission, thank you for the opportunity to speak to you today.

I'm a professor of law at UCLA's School of Law where I teach criminal law, legal ethics, and a course on prison law and policy.

My research focuses on the legal policy and normative implications of incarcerating convicted offenders.

Now, I have been asked to talk today about issues relating to prison rape from the perspective of labor. I should say I'm not a correctional officer, so I can't speak as someone with front-line experience.

Instead, what I want to do is step back and
consider some of the structural conditions that make prison rape possible and what they suggest regarding changes in policies relating to staffing, training, and other labor issues.

I should say that most of what I'm going to say relates to men's prisons where the danger to prisoners of unwanted sex comes largely from fellow inmates.

Women's prisons pose a different kind of problem. In women's prisons the threat of nonconsensual or coerced sex comes overwhelmingly from the correctional officers themselves.

So this difference in the source of the threat means that different strategies are required to address the problem of prison rape in men's and women's facilities.

Before I close, I'm going to, therefore, touch briefly on issues relating to women's prisons. But most of what I'm going to say is related to men's facilities.

What I want to do is just say a few words about three features of the current system that in the context of men's prisons that facilitate unwanted sex behind bars.

First, overcrowding; second, prison
culture; and, third, what I will call the structural

collusion between correctional officers and the most

powerful inmates.

And here what I'm going to do is just say a

little bit about each of these concerns and then

suggest what policy implications they have for

efforts to reduce the incidence of unwanted sex

behind bars, in particular related to labor.

So first, overcrowding. It's no secret

that America's prisons and jails are bursting at the

seams. In California alone the state prison system

is operating at almost 200 percent capacity. I

could list many, many examples. That's just one

I'll give you.

Now, among the many problems that

overcrowding causes is that it multiplies

opportunities for inmate-on-inmate sexual abuse.

Now, partly this is a function of the spaces

themselves being used to house more prisoners than

their designers intended.

Just to give you a couple of examples to

illustrate the problem, in maximum security

facilities, it's standard practice now in, I would

say, the majority of facilities across the country

that prisoners are double-celled in cells designed
for single inmates, which, as you might imagine, puts weaker inmates at the mercy of the stronger inmate in the cells.

The other sort of predominant housing structure is a dormitory. And when you have -- you know, the more crowded your dormitories, the more opportunities there are for abuse, the more blind spots there are, the more difficult it is for correctional officers to police the dorm.

And just to kind of illustrate this point, I gave Chairman Walton an article from the "New York Times" last week with a photograph of a dorm in a California prison. And I think it just sort of -- it makes the point quite clearly because you -- you can imagine how difficult it would be, particularly with the staffing ratios that Joe Baumann just mentioned, to actually police the arena.

So that's one way that overcrowding creates opportunities for abuse. The other way is simply that when prisons are overcrowded, it makes it harder to keep order. In an unstable environment, there are more opportunities for victimization, not to mention greater pressure on weaker inmates to enter into protective pairings, even if it means having to exchange sex for protection.
Now, if overcrowding exacerbates the problem of prison rape, as I'm suggesting it does, the most direct way to address the problem is, of course, to reduce the prison population or to find some other way to ease the pressure. Especially in maximum security institutions with a large number of potential predators, the goal should be the single celling of all inmates.

But barring the reduction in prison populations -- and this is now the first implication of my remarks for prison labor -- we should make a commitment that staffing levels should be commensurate with the needs of the facilities given the actual number of inmates being housed and not the number of inmates for which the institution was originally intended.

Again, Joe just mentioned some difficulties with even filling the vacancies that we have. But if we're just trying to think in a broad scale about policy, it seems to me that it would be important to increase the staffing levels to provide the possibility of adequate oversight.

If you just think about it, prison guards in overcrowded facilities are often scrambling just to perform the basic minimums necessary to keep the
system working. Prisoners still have to eat,
shower, get their meds, get to programs, et cetera,
and the more prisoners there are, the more time
staff have to spend just meeting those basic needs
and the less time they have to perform the
surveillance necessary to make sure that vulnerable
inmates are not being abused and the less time they
have to deal with brewing tensions. Okay. So
that's overcrowding.

The second feature of the system that I
wanted to talk about is what I call prison culture.
So what role does culture have in facilitating
prison rape?

Although the primary perpetrators of rape
in men's facilities are fellow prisoners, this abuse
is facilitated in a climate in which line officers
often regard inmates with disdain, contempt,
indifference, or outright hostility. Thus making it
easier for them to dismiss or minimize the harm or
fear of harm that prisoners might report.

Now, this is just a basic psychological
reality. Members of groups that are viewed with
disdain or contempt are simply not given the kind of
sympathy and consideration that would be given to
someone who was valued and respected.
So this means that engaging correctional officers in efforts to reduce unwanted sex behind bars will, in many cases, require changing their attitudes towards prisoners.

Now, it bears noting that to some extent the antagonism, suspicion, and even hostility that COs will feel towards inmates is understandable. As we heard yesterday, inmates can be extremely manipulative. So COs, correctional officers, learn early to be skeptical of whatever inmates will tell them. And, moreover, given the ever-present threat of violence against officers by prisoners, officers learn to view all prisoners as potential threats and, therefore, with some animus.

But if these attitudes are understandable, they're nonetheless a problem for efforts to reduce the incidence of prison rape because they make it more likely, as I suggested, that the threats of prisoners will not be taken seriously.

Now, how is the problem to be addressed? I have a few suggestions that I elaborate on in my testimony. But I'll just say briefly here, first, regular training programs that should teach the facts and signs of prison rape and should also teach correctional officers to regard prisoners as
potential victims needing and deserving protection. This will require, among other things, training for empathy and also perhaps most importantly training for interpersonal communication skills that would allow correctional officers to communicate even with prisoners they may have some animus towards and possibly defuse tension.

So first, training; second, hiring practices should aim to weed out recruits that I -- for lack of a better term, I describe as having a Rambo-like mentality in favor of those who demonstrate good interpersonal skills and a capacity for empathy; and, third, management needs to make a commitment to such changes and indicate through its policies and practices that protecting vulnerable inmates from coerced or unwanted sex is a high priority and a central part of the obligations of a correctional officer.

Now, it's one thing to enumerate these ideas and aims. It's another thing to know how to make them a reality. As I suggested in my written testimony, I think the fastest way to ensure the successful implementation of these strategies would be for Congress and state legislatures to create a statutory obligation on the part of prison officials
to take reasonable steps to protect prisoners from rape and other unwanted sex and to create a cause of action allowing prisoners to sue for damages when that obligation is violated.

And if this is going to have an effect, if such a statute were actually to bring about practical changes in the prisons, which, after all, is the goal, it ought to establish a negligence standard under which prisoners may recover if under the circumstances prison officials should have known of the danger of unwanted sex and failed to take reasonable steps to overt the danger.

Were such a standard imposed, prison officials would have a strong incentive to take the kinds of steps that I suggested as well as others that in their view would have a meaningful effect on reducing the harm.

Now, currently, it bears noting the only basis for recovery of prisoners who have been raped behind bars by a fellow inmate is an Eighth Amendment failure to protect claim under Farmer versus Brennan.

Now, under Farmer, prisoners who have been raped by fellow inmates are only able to recover on a failure to protect claim if they can demonstrate
that prison officials were deliberately indifferent -- that's the legal term of art -- which requires a showing that officials both knew of and disregarded an excessive risk to inmate health and safety.

Now, notice it's not enough that the official knew of the facts from which an inference of danger might be drawn. He or she must also draw the inference.

Now, this standard poses a serious problem for efforts to reduce the incidence of prison rape because they encourage ignorance on the part of prison officials as to the existence of conditions in their facilities that are likely to facilitate opportunities for rape.

So establishing a statutory liability for negligent failure to take reasonable precautions, as I suggest, would create an incentive for prison officials to take those necessary steps.

Okay. Third and more briefly, the third feature of the prison system I just want to talk about is what I call the structural collusion between prison officials and line officers, in particular, and powerful prisoners.

So as is well known, line officers work
unarmed in locked facilities where they are greatly outnumbered, which means that the possibility of violence is ever present. And as the captors, the prison officials -- officers are a likely target. But when prisoners engage in power struggles amongst themselves, they're less likely to turn their aggression against the officers. And when the frustrations of enforced confinement and enforced celibacy are relieved through other channels, this frustration is less likely to erupt in riots, assaults on guards or other breaches of security.

This is why it is in the interests of line officers to turn a blind eye to the practice of protective pairings in which weaker inmates vulnerable to repeated sexual assaults by gangs of prisoners hook up with a more powerful prisoner to exchange sex and other services, including allowing themselves to be prostituted, with the proceeds going to their protector, in exchange for protection from violence and gang rape.

Now, the protecters under these circumstances obviously benefit, but correctional officers also benefit because the most volatile prisoners, those who might be otherwise tempted to
use violence against officers, have a ready outlet for their aggression and frustration. And they enjoy a power in the prison, which makes them relatively accepting of the status quo.

Now, the problem with this equilibrium, of course, is that it comes at a painfully high cost to weak prisoners.

There's obviously much that we can say about how to disrupt the dynamic to protect vulnerable prisoners from the pressure to enter into a protective pairing.

Here I just want to note that if my assessment is correct as to the interests of officers in maintaining the status quo with respect to protective pairings, it suggests that it's not enough to implement mechanisms for protecting vulnerable inmates.

In addition, it's also necessary to consider the possible implications of these policy changes for the safety of custodial staff, in particular those assigned to housing units with more violent prisoners.

If the role of COs is going to change in terms of their facilitating or turning a blind eye to such pairings, we have to create incentives for
them to do so in an environment they feel it's safe
to do so.

Now, I know I've gone on at some length. I
would like to say just a few words about female
prisoners, if I may.

So unlike in male prisons where the rape of
prisoners is largely perpetrated by fellow inmates,
in female prisons we know it's overwhelmingly male
officers that create the threat or fact of forced or
coerced sex.

Now, in my view, the most straightforward
answer to this problem is to mandate that all staff
and line officers in contact positions in female
prisons should be exclusively female. This policy
is standard practice in Canadian prisons for
precisely the reasons just noted.

It is, moreover, mandated by the United
Nations Standard Minimum Rules for the Treatment of
Prisoners. And it's also, I believe, the case in
many European countries.

Now, were this policy implemented in the
United States, forced or coerced sex in female
prisons would not disappear, but it would be
dramatically diminished. And for this reason it
seems to me an obvious change to make.
Now, in my written testimony I discuss at some length the legal problems that I anticipate such a policy might raise and I also explain why ultimately I think each of those problems can be overcome.

Now, here I just want to note that even if this policy is not ultimately adopted, which I hope that it would be, but if not, there are still changes that could and should be made to reduce the danger to female prisoners from sexual abuse by male officers.

Screening mechanisms should be developed to assess mail candidates for jobs in women's prisons to weed out those whose profiles suggest any risk that they might be tempted to abuse their authority.

Staffing rosters in women's facilities should aim to limit the circumstances under which male guards or other male staff have supervisory authority over female inmates.

Policies should be implemented that minimize opportunities for male officers to be alone with one or more female prisoners and accompanied by a female officer.

These are just a few of the policies that ought to be implemented. I realize that they may be
difficult to put into place, but the fact that they're necessary indicates both the scope of the threat to female prisoners from male officers and the appeal of the blanket prohibition on male officers holding contact positions in female institutions.

Thanks.

CHAIRMAN WALTON: Thank you very much for your testimony.

Mr. Lowry.

MR. BRYAN LOWRY: Thank you, sir.

My name's Bryan Lowry. First, I would like to thank the Commission for the opportunity to come here and testify today.

I'm the current president of the Council of Prison Locals, which represents 104 locals throughout the United States in every federal prison. We're affiliated with the American Federation of Government Employees.

We have approximately 19,000 dues-paying members throughout every federal prison or facility, that actually belongs to our union. We are 70 percent organized as a prison council, which means that of all the bargaining unit employees that are employed by the Bureau of Prisons, 70 percent are