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

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

That's all I got.

CHAIRMAN WALTON: Thank you very much for
your testimony.

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

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

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

We have heard on several occasions,
including during this hearing, about your
organization and its power, and the claim that because of that power, it undermines the ability of the system to reform itself.

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

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

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

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

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

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

But the Governor's office decided to cap
that at a thousand inmates. That's designed for
first- and second-time offender drug users. But
it's capped.
Until I see some movement there, there's no -- in my opinion, there's no commitment to reform from the Governor's office or from leadership in the department. And reform starts at the top.

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

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

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

So reform begins at the top.

CHAIRMAN WALTON: Do you agree with
Mr. Ortiz as far as the California system is concerned, that the inmates control the institutions?

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

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

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

And management decides that it's not worth the effort for you to enforce the basic rules until something subsequently happens, and then we try to get back to square one. And my people get tired of
getting whipsawed. It's okay for the inmate to do
this. Oh, shit, I got in trouble by the auditors
because I'm not enforcing that rule; therefore,
everybody put the inmates back to square one,
whenever it comes to enforcing, or pick a rule.

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

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

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

CHAIRMAN WALTON: Commissioner Fellner?

COMMISSIONER FELLNER: Thank you all for
testifying.
I have a number of questions.
Mr. Baumann, I'm delighted to hear that the union actually supported the media access, because I think access --
MR. JOE BAUMANN: Five times.
COMMISSIONER FELLNER: Five times.
And I hope you -- would you send us whatever statements you have about media support for the access? Because I think that's an important part to have in the record, because I think a number of us commissioners believe that transparency and openness helps everybody, helps staff, helps inmates, helps management. So that's good.
I wonder, though -- one of the points which Professor Dolovich made and which we've heard, actually, from many people is about overcrowding.
And I have heard -- and I don't know if it's true or not -- that your -- that the union in California opposes efforts that would reduce the prison population. For example, they opposed efforts to change the three strikes law so that the third strike would have to be a violent strike instead of a lower.
And I would welcome some clarification on
your position on that, whether or not the State should be taking steps to reduce the prison population.

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

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

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

But if you would start.

MR. JOE BAUMANN: One of the issues I have personally is, is I just had a friend of mine whose 24-, 25-year-old son got caught the second time high on meth, breaking into a house with a gun. He got a three-year suspended sentence, kicked right out the door. And he's running the streets right now on a three-year suspended felony sentence. No drug
program at the county level because the county
doesn't want to put the money in the drug program.

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

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

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

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

As it is right now, if you have a parolee
who has a mental health issue, doesn't make his
doctor appointments and doesn't take his medication,
what do you do with the person? You roll him up,
you send him back to prison. There's no
alternatives to that.
There are no alternatives for somebody who has an anger management issue or a substance abuse --

COMMISSIONER FELLNER: And you think there should be alternatives?

MR. JOE BAUMANN: There should be.

COMMISSIONER FELLNER: Okay. Good.

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

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

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

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

COMMISSIONER FELLNER. You don't know?

MR. JOE BAUMANN: -- I don't have the authority to, even if I did know. And I don't know.
COMMISSIONER FELLNER: You don't know or you --

MR. JOE BAUMANN: I don't know.

COMMISSIONER FELLNER: Okay.

MR. JOE BAUMANN: Sorry.

COMMISSIONER FELLNER: Okay.

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

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

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

COMMISSIONER FELLNER: Do you think it
would be a good idea for inmates to have parole in
the federal system?

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

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

How well do you -- one of the things that
we have heard repeatedly is that prisoners do not
report sexual assault or other problems for a number
of reasons, some of which have to do with ego, some
of which have to do -- and shame, some of which have
to do with fear of retaliation from the inmates
against whom they are talking, and some of which has
to do with the sense that it doesn't do any good.
You file a grievance. It gets tossed in the trash.
Officers aren't paying attention. Nothing happens.
And I wondered if you could say to me how
in California and how in Beaumont, how you have made
sure -- if you have been able to create effective
grievance and reporting mechanisms and what -- and
what is required to make for effective grievance reporting, especially around sexual abuse.

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

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

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

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

But back to the issue at hand is, is, you know, the Office of the Inspector General, the
Bureau of Independent Review have an 800 number that accepts collect calls from each one of the institutions as a last-step measure. The normal inmate appellate process with filling out a written 602 is one method. That's usually not the best method.

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

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

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

So one of the things --
COMMISSIONER FELLNER: So I'm not sure if I'm hearing you say --

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

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

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

COMMISSIONER FELLNER: Okay.

And in the federal -- thank you.

And in the federal system?

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

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

But the confidentiality is very difficult. To separate the inmate is pretty common to do. What we do is, if, for instance, he was raped, we handle it very carefully. And we call for medical. They see him, talk to him a little bit. But, see, it's a
contract medical we have. So they're not really sensitive to inmate's needs because they're understaffed, they're contract workers, they're not happy, they don't want to be in there.

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

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

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

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

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

MR. ISAAC ORTIZ: Yes, ma'am.
COMMISSIONER FELLNER: Okay. You have 24/7 medical care that can provide that?

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

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

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

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

If an inmate comes to a staff member and reports that he's been raped, sexually assaulted, or assaulted, period, our first response is to isolate the inmate immediately, to keep our eyes on it. To
call for assistance from probably supervision is what we're going to do, the first thing, and then we're going to separate the inmate from the population.

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

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

Now, one thing I want to discuss that you asked Mr. Ortiz, it was about medical care. About two or three years ago the Bureau of Prisons decided they no longer wanted to pay for medical employees to be on site from midnight to 6:00 in the morning. So between midnight and 6:00 in every federal prison there is nobody there that could even look at an inmate.

If something happens to an inmate medically, whether it's assault or it's a heart attack or whatever, the first response is to call outside medical care and have them send an ambulance
and come pick the inmate up.

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

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

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

COMMISSIONER FELLNER: If I may ask one more question.
MS. SHARON DOLOVICH: Can I interrupt? I wanted to say some things about the first question that you asked.

COMMISSIONER FELLNER: Sure.

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

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

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

COMMISSIONER FELLNER: Including a nonviolent --

MS. SHARON DOLOVICH: Right. Because it could be a misdemeanor that is charged as a felony. So petty theft with a prior can be a third strike. So Prop 66 proposed to basically modify
what I consider to be the most objectionable features of the law and bring it more in line with other states. CCPOA was one of the funders of the "No on 66" campaign. So they actually took a position against the reforms.

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

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

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

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

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

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

Just one other piece of this. It was
mentioned in terms of the federal mandatory minimum
sentences. The federal system is the one prison
system in the country that's growing at a rate
consistent with the 1990s. It's now the biggest
prison system in the country. And I think the
primary reason is the mandatory minimum sentencing
regime that started in 1986 with the Anti-Drug Abuse Act and then was instantiated into the federal sentencing guidelines.

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

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

MS. SHARON DOLOVICH: Sure.

COMMISSIONER FELLNER: Yeah.

I wanted one more question to Mr. Baumann.

That was the one.

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

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

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

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

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

CHAIRMAN WALTON: Commissioner Struckman-Johnson.

COMMISSIONER STRUCKMAN-JOHNSON: Just thank everybody for coming today. Very interesting testimony. Good to hear all the different
To the professor, what do you think of the opinion expressed that the inmates run the prisons?

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

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

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

I will say, I admire the candor of the federal people, those who described their problems. I regret it very much for the United States, for you guys, for the inmates.
As you know, our Commission has a mandate to do a number of things, and one of the things we're not supposed to do, though, is to propose solutions that cost a lot of money. Maybe a little money, but not a lot of money.

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

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

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

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

Do you think that has significant potential -- significant political support?
MS. SHARON DOLOVICH: It's hard to say. I anticipate two kind of responses perhaps related to particular constituencies in opposition. The first, I think, will come from -- I'm, you know, interested to get my colleagues up here, their sense of this too, but from male officers who object to being shut out of contact positions in female prisons.

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

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

And there I think it's pretty clear that the objection will not fly. Gender is an intermediate -- gets intermediate scrutiny, gender
discrimination, which requires there to be a compelling governmental interest and -- and a substantial relationship between the objectives and the restriction.

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

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

As far as the kind of concern about formal equality goes, I think it's based on a false equivalence because the objection here is simply that the central source of the threat -- I know I'm repeating myself, but the central source of the threat to female prisoners comes from male correctional officers. It's simply not the case that the central source of the threat to male
prisoners in terms of prison rape comes from female officers, as we know it comes from other inmates. And, in fact, again, I would be interested to know what my colleagues think. But my sense from talking to some prisoners and also prison officials and also just seeing what I've seen, at least in my experience in the L.A. County jail where I spent some time last summer just observing, is that I think that women officers in male facilities can sometimes do better at defusing tensions and being a sympathetic ear to try to ferret out problems.

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

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

MR. JOE BAUMANN: No. Personally, I don't think there's a problem with it, except when you go to the two Madera institutions. And the only thing I see is logistics. You've got two institutions there that are 85 percent male staff. And if you turn around and pink-slipped everybody right now, you wouldn't have enough staff there to run the
So, I mean, they went in and built these beasts, these just ungodly sized institutions, went out into the local community, recruited who they could recruit. And I don't think you could go in the local community to staff the place back up if you made the decision to do that.

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

COMMISSIONER KANEB: Mr. Baumann, I hadn't quite finished yet. And I will then follow the judge with this because I wanted to ask you this. This morning one of our witnesses -- and I don't know if you were -- were you here this morning?

MR. JOE BAUMANN: Briefly.

COMMISSIONER KANEB: All right. A gentleman from Connecticut extolled the virtues of having female staff and male staff in both female and male prisons, felt it was good change, productive, et cetera.
I'm -- if you feel uncomfortable giving a personal opinion, I guess you'll say so. But assuming that problems like you've got a lot of male officers in female prisons now and it's a big logistical problem, a hardship for some of them or a lot of them, assuming there was a period that -- you know, of transition -- it doesn't have to happen all -- how would you feel about Professor Dolovich's idea?

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

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

COMMISSIONER KANEB: Okay. So it worked in that particular case. But I'm asking you --
MR. JOE BAUMANN: Well -- and I'm trying to kind of flare it back out. And it's just like anything else. It's the people that you put into the job as much as anything else.

COMMISSIONER KANEB: I understand that.

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

COMMISSIONER KANEB: Okay.

Professor Dolovich, one last. You said we need to create -- I'm paraphrasing you -- incentives for officers not to turn a blind eye to prisoner-on-prisoner forced sex. Would you give us some ideas?

MS. SHARON DOLOVICH: Well, by that I meant that it's not enough to simply think about how to protect the vulnerable inmates, which is obviously urgent, but also to keep in mind that if you are disrupting the dynamics of protective pairings, you could create a situation where staff would be at greater risk.
So I guess I was thinking, you know, of a couple of things. One is just, you know, the efforts to disrupt those pairings would also have to be undertaken with a broader effort to meet staffing level needs that we've been talking about, even to, you know, rearrange housing.

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

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

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

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

MS. SHARON DOLOVICH: So I may have -- I'm not sure if this speaks to the question that you
were thinking, but either I misused the term or I
used it in a misleading way when I was talking. Or
I was thinking about the larger context.

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

COMMISSIONER KANEB: Yes. Yes. We
understand that. Thank you.

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

COMMISSIONER FELLNER: You mean in housing
units?

CHAIRMAN WALTON: In housing units, yes.

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

So, I mean, it's an extensive background
that looks into probably their last ten years' history on their jobs. They go out and talk to your neighbors. They interview anybody and everybody. They look into your personal finances.

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

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

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

CHAIRMAN WALTON: Mr. Ortiz?

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

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

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

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

That's my opinion.
COMMISSIONER KANEB: I think you misstated her position.

MS. SHARON DOLOVICH: Yes.

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

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

So...

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

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

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

COMMISSIONER FELLNER: I want to hear her, but I wanted you to include in yours -- you might want to refer to Michigan, which I'm sure you're
familiar with, and what has happened -- and what
happened there.

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

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

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

        That's all I wanted to say.

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

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

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

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

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

So a pat search by a man or sexual aggression by a man is responded to differently, has a different emotional and psychological impact than it would for a man who -- even a man who gets approached by a female, improper as that is and it
should be sanctioned and not allowed, the impact is likely to not be as grave.

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

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

MR. BRYAN LOWRY: I stated that.

COMMISSIONER FELLNER: Right.

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

I think it's also true in California that you -- the complainant -- the victim or the alleged victim will be put into protective custody.
Would it not be possible to simply -- and
I'm curious, in your experience as line officers,
would it not be possible to simply move the victim
or the alleged perpetrator to a different housing
unit? Do you have to put -- do you think that
there's not some other way besides putting the
victim into protective custody since that does seem
to be a disincentive to come forward?

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

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

So by allowing that inmate who made the
report to remain on the compound, you're putting him
in jeopardy and could possibly be fatal.

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

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

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

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

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

MR. BRYAN LOWRY: One thing that you need
to understand are there's two types of protective custody inmates. There are the confirmed ones and there's unconfirmed.

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

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

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

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

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

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

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

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

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

MR. BRYAN LOWRY: Well, I think there's going to be twofold. It depends on how many inmates may have been involved here. And, number two, the psychology department will play a role in the fact,
would the inmate feel safe going back out on the
compound as well? Do these inmates know that he
actually made an allegation, and does that inmate
feel any danger going out there?
And that's a key we have to rely on too,
that the inmates have the feeling that they may not
be safe out on an open compound.

COMMISSIONER FELLNER: And then what do you
do?

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

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

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

MR. JOE BAUMANN: No. And one of the
problems I see is, is when you work the process out
to the end and there's a determination that there's
going to be criminal prosecution, the person's
name's out there -- or the victim's name's out there
again.

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

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

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

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

COMMISSIONER FELLNER: That's what I asked
them. That's exactly what was my question.

COMMISSIONER KANE B: All right. Then I

missed that. I'm sorry.

CHAIRMAN WALTON: But I guess you're saying

that may not be adequate because many of the

perpetrators may have close connections to other

cohorts who will retaliate on behalf of the

perpetrator.

MR. JOE BAUMANN: And especially whenever

you get into issues like prostitution, forced

prostitution, that type of serial abuse.

COMMISSIONER FELLNER: Gangs.

MR. JOE BAUMANN: Yeah. Or whatever term

you want to use, whenever you have serial abuse by

numerous suspects or numerous people, you can't

leave that person there. It's not safe for them at

all.

COMMISSIONER FELLNER: Can I ask one other

question since we have time?

I wondered what your opinion was about

having separate housing units for men -- let's

address it in this case men who are either gay or

who would seem to be more at risk or more vulnerable

by virtue of their stature because they're

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

MS. SHARON DOLOVICH: They're all in one.
COMMISSIONER FELLNER: They're all in one.

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

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

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

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

And just that short time I dealt with that,
my observations, for what they're worth, was it was
almost meaningless. They were protected basically from 10 o'clock at night to 6:00 in the morning. Once they were out in the general population, it was kind of a free-for-all.

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

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

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

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

COMMISSIONER FELLNER: I didn't say that.

MR. ISAAC ORTIZ: I know, but -- and I understand. I think they should be, you know, in a separate -- but we have a problem with the type of
facilities we have available to be able to separate them like that. Unless we change our structure, the way our units are put together, then, yeah, I would support something like that, that they would separate them in order for their safety.

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

CHAIRMAN WALTON: If there's nothing else --

Yes.

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

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

Thank you.

These proceedings are adjourned.

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