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

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

8 So anyway, that concludes my testimony.

9 CHAIRMAN WALTON: Thank you very much.
10 Professor.

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

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

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

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

25 Instead, what I want to do is step back and

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1 consider some of the structural conditions that make
2 prison rape possible and what they suggest regarding
3 changes in policies relating to staffing, training,
4 and other labor issues.

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

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

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

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

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

25 First, overcrowding; second, prison

1 culture; and, third, what I will call the structural
2 collusion between correctional officers and the most
3 powerful inmates.

4 And here what I'm going to do is just say a
5 little bit about each of these concerns and then
6 suggest what policy implications they have for
7 efforts to reduce the incidence of unwanted sex
8 behind bars, in particular related to labor.

9 So first, overcrowding. It's no secret
10 that America's prisons and jails are bursting at the
11 seams. In California alone the state prison system
12 is operating at almost 200 percent capacity. I
13 could list many, many examples. That's just one
14 I'll give you.

15 Now, among the many problems that
16 overcrowding causes is that it multiplies
17 opportunities for inmate-on-inmate sexual abuse.
18 Now, partly this is a function of the spaces
19 themselves being used to house more prisoners than
20 their designers intended.

21 Just to give you a couple of examples to
22 illustrate the problem, in maximum security
23 facilities, it's standard practice now in, I would
24 say, the majority of facilities across the country
25 that prisoners are double-celled in cells designed

1 for single inmates, which, as you might imagine,
2 puts weaker inmates at the mercy of the stronger
3 inmate in the cells.

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

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

18 So that's one way that overcrowding creates
19 opportunities for abuse. The other way is simply
20 that when prisons are overcrowded, it makes it
21 harder to keep order. In an unstable environment,
22 there are more opportunities for victimization, not
23 to mention greater pressure on weaker inmates to
24 enter into protective pairings, even if it means
25 having to exchange sex for protection.

1 Now, if overcrowding exacerbates the
2 problem of prison rape, as I'm suggesting it does,
3 the most direct way to address the problem is, of
4 course, to reduce the prison population or to find
5 some other way to ease the pressure. Especially in
6 maximum security institutions with a large number of
7 potential predators, the goal should be the single
8 celling of all inmates.

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

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

23 If you just think about it, prison guards
24 in overcrowded facilities are often scrambling just
25 to perform the basic minimums necessary to keep the

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1 system working. Prisoners still have to eat,
2 shower, get their meds, get to programs, et cetera,
3 and the more prisoners there are, the more time
4 staff have to spend just meeting those basic needs
5 and the less time they have to perform the
6 surveillance necessary to make sure that vulnerable
7 inmates are not being abused and the less time they
8 have to deal with brewing tensions. Okay. So
9 that's overcrowding.

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

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

21 Now, this is just a basic psychological
22 reality. Members of groups that are viewed with
23 disdain or contempt are simply not given the kind of
24 sympathy and consideration that would be given to
25 someone who was valued and respected.

1 So this means that engaging correctional
2 officers in efforts to reduce unwanted sex behind
3 bars will, in many cases, require changing their
4 attitudes towards prisoners.

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

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

20 Now, how is the problem to be addressed? I
21 have a few suggestions that I elaborate on in my
22 testimony. But I'll just say briefly here, first,
23 regular training programs that should teach the
24 facts and signs of prison rape and should also teach
25 correctional officers to regard prisoners as

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1 potential victims needing and deserving protection.

2 This will require, among other things,
3 training for empathy and also perhaps most
4 importantly training for interpersonal communication
5 skills that would allow correctional officers to
6 communicate even with prisoners they may have some
7 animus towards and possibly defuse tension.

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

19 Now, it's one thing to enumerate these
20 ideas and aims. It's another thing to know how to
21 make them a reality. As I suggested in my written
22 testimony, I think the fastest way to ensure the
23 successful implementation of these strategies would
24 be for Congress and state legislatures to create a
25 statutory obligation on the part of prison officials

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1 to take reasonable steps to protect prisoners from
2 rape and other unwanted sex and to create a cause of
3 action allowing prisoners to sue for damages when
4 that obligation is violated.

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

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

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

23 Now, under *Farmer*, prisoners who have been
24 raped by fellow inmates are only able to recover on
25 a failure to protect claim if they can demonstrate

1 that prison officials were deliberately
2 indifferent -- that's the legal term of art -- which
3 requires a showing that officials both knew of and
4 disregarded an excessive risk to inmate health and
5 safety.

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

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

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

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

25 So as is well known, line officers work

1 unarmed in locked facilities where they are greatly
2 outnumbered, which means that the possibility of
3 violence is ever present. And as the captors, the
4 prison officials -- officers are a likely target.

5 But when prisoners engage in power
6 struggles amongst themselves, they're less likely to
7 turn their aggression against the officers. And
8 when the frustrations of enforced confinement and
9 enforced celibacy are relieved through other
10 channels, this frustration is less likely to erupt
11 in riots, assaults on guards or other breaches of
12 security.

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

22 Now, the protecters under these
23 circumstances obviously benefit, but correctional
24 officers also benefit because the most volatile
25 prisoners, those who might be otherwise tempted to

1 use violence against officers, have a ready outlet
2 for their aggression and frustration. And they
3 enjoy a power in the prison, which makes them
4 relatively accepting of the status quo.

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

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

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

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

23 If the role of COs is going to change in
24 terms of their facilitating or turning a blind eye
25 to such pairings, we have to create incentives for

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1 them to do so in an environment they feel it's safe
2 to do so.

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

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

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

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

21 Now, were this policy implemented in the
22 United States, forced or coerced sex in female
23 prisons would not disappear, but it would be
24 dramatically diminished. And for this reason it
25 seems to me an obvious change to make.

1 Now, in my written testimony I discuss at
2 some length the legal problems that I anticipate
3 such a policy might raise and I also explain why
4 ultimately I think each of those problems can be
5 overcome.

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

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

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

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

24 These are just a few of the policies that
25 ought to be implemented. I realize that they may be

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1 difficult to put into place, but the fact that
2 they're necessary indicates both the scope of the
3 threat to female prisoners from male officers and
4 the appeal of the blanket prohibition on male
5 officers holding contact positions in female
6 institutions.

7 Thanks.

8 CHAIRMAN WALTON: Thank you very much for
9 your testimony.

10 Mr. Lowry.

11 MR. BRYAN LOWRY: Thank you, sir.

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

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

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