Internal Oversight: Institutional Accountability for Eliminating Sexual Violence

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It is my honor and privilege to sit before you this morning and share my perspectives and insights based on my 26-year tenure with the Texas Department of Criminal Justice (TDCJ). After graduating from Sam Houston State University, I began my career in the summer of 1980 as a correctional officer with the Texas Department of Corrections as the prison system was going under federal court supervision as a result of *Ruiz vs. Estelle* (TDC was merged into TDCJ through a consolidation of prisons, parole, and probation in 1989). The majority of my career as I promoted through the ranks was spent under active federal court monitoring. I served as a Senior Warden at two different facilities and then promoted to a Regional Director, Deputy Director, and Director of the Correctional Institutional Division prior to my retirement in the summer of 2006. During my three year tenure as the director of the prison division I had oversight responsibility for 94 state facilities and 12 private prisons.

I begin our focus on internal institutional accountability by referencing John Dilulio's excellent text, Governing Prisons in which he examines correctional management through different state correctional systems. He begins one of his final chapters by quoting James Madison from Federalist No. 51: *In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself.* Dilulio *then* writes "What ...Madison argued with respect to the government of society at large applies with equal force to the government of the prison. Prison managers must effect a government strong enough to control a community of persons... At the same time, however, prison managers must be subject to a vigorous system of internal and external controls on their behavior, including ...rigorous internal supervision and inspections, ongoing intradepartmental evaluations ..." My testimony today focuses on some of the critical processes that I believe are absolute and necessary for prison managers to effectively provide internal oversight and accountability in our prisons today focusing particularly on eliminating the occurrence of sexual assaults within our correctional facilities.

Many of the processes in place today within the Texas Department of Criminal Justice grew out of our long history of federal court supervision. Today, I feel strongly that each is vital to the successful operation of any prison system. The different processes that I will address are: 1) Mandatory reporting; 2) Offender grievances; 3) Internal Ombudsman program; 4) Safe Prison Program; and finally 5) Operational Review Program. The names or titles of the different mechanisms that I talk about today are less important than the actual policy and processes that they include, and I believe must be in place in some similar format within any of our prison systems.

Internal accountability begins with knowing what is actually occurring within a prison facility. I believe that it is imperative to have strong reporting policy and procedures in place with an absolute expectation that any serious or unusual incident will be reported. Agency policies must define reporting procedures, specifically identify incidents that must be reported, detail written report requirements and finally specify follow-up expectations. In TDCJ we developed a mandatory reporting policy and procedure for clearly identified unusual or serious incidents. Our policy and procedure (Administrative Directive 2.15) very specifically lists incidents that must be reported, within what time frame, and details actual reporting processes to include written reports (administrative reviews) along with follow-up requirements. Reporting requirements are to a central office (Emergency Action Center) who is responsible for gathering data and disseminating information to the agency leadership on a daily, monthly, and annual basis.

Prior to 1999, our policy only required reporting for alleged rapes, and a written administrative review was optional dependent on warden discretion. In 1999, our policy changed its language to alleged sexual assaults and began including monthly data on reported numbers. By 2000, our policy included an expanded definition of sexual assaults and required written administrative reviews and follow-ups on each alleged sexual assault.

Mandatory reporting to a central reporting office provides prison agencies the ability to collect data in a timely manner and disseminate that information to the agency leadership. The Emergency Action Center provided daily reports to regional and executive leadership of incidents that occurred within the previous 24 hours along with monthly reports that specified identified incidents by unit. This level of information sharing provides prison managers with the eyesight necessary to focus their efforts on issues and concerns on both a local level as well as a systems level.

Formal offender grievance policies and processes are a cornerstone of internal accountability systems. Texas, like all state systems, has a detailed policy outlining offender access to the grievance system and procedures for staff to investigate and resolve complaints. If not satisfied with the initial response (In TDCJ, the first response is at the unit level, signed off

by the Warden), an appeal or second level review is provided by the central office. Several policy components are essential in a grievance system in order for it to provide prison managers a valid oversight and accountability tool. Offenders must have wide access to the process and understand how to utilize the system. Investigators must be appropriately trained and able to conduct good and necessary investigations. A component of our system in TDCJ that I felt was of great value was that unit grievance investigators, regional investigators, and central office grievance administrators reported to a division separate from the prison division. Unit investigators are considered "dual-supervised" employees receiving technical supervision (which included quality of investigations and appropriate action) from a separate grievance department outside the supervision of the prison division director. A large system like Texas also depends upon regional grievance investigators to provide technical oversight and support to the unit investigators. They also serve in a dual-supervised position reporting to both the central office grievance administrator as well as the regional director. I believe this organizational structure provides a strong level of support, viability, and integrity to a grievance procedure.

Certainly a grievance process provides a critical avenue for a prisoner to initiate a sexual assault allegation and a grievance policy and procedure should provide specific guidance to grievance investigators. Sexual assault allegations must be handled as an emergency grievance and in accordance with established and appropriate protocols.

The establishment of an ombudsman program is another internal mechanism for prison managers to provide a formal avenue to address offender allegations that might surface through a family member or friend. The ombudsman office as created within TDCJ addressed issues and concerns that the agency received from the public. The ombudsman program provides for a record of complaints received and actions taken to address recorded concerns. I believe an ombudsman office must serve at the division level and executive level of the agency to provide an avenue for complaints or allegations to go straight to the top. Executive Leadership then has the opportunity through its review to address any issues at a local level.

Specific to sexual assaults, an ombudsman program provides an additional avenue for an allegation to be reported outside of a local unit and provides executive level prison managers a critical opportunity to stay very focused on offender issues within their prisons. Policy and procedure that outlines an ombudsman program must provide specific direction for life-threatening or emergency complaints for immediate action.

Prison systems across the country have established very specific and detailed policy and procedures to address sexual assault allegations and are working very hard to take the steps necessary to eliminate the occurrence of sexual assault. Texas established a Safe Prison Program that provides a detailed, comprehensive approach to addressing sexual violence

within our prisons. Because of the critical nature of the Safe Prison Program, we established Safe Prison Coordinators at each facility to insure program compliance and then developed regional coordinators and a Safe Prison Program office within the central office. Dedicated staff provides the agency with the focus to fully implement policy and procedures and provides a necessary oversight process to insure that unit managers are in line with expectations Utilizing daily and monthly data provided by mandatory reporting gives prison mangers the ability to stay abreast of potential problems throughout the system.

I have very briefly reviewed several institutional policies and programs designed to provide internal accountability to prison operations, but a prison agency must have several additional systems in place to help insure programs and policy are in compliance at the local unit level, regional level, and the division level. TDCJ established a number of years ago an Operational Review Program. Every three years, every prison goes through an aggressive and comprehensive on-site review to monitor "...unit adherence to TDCJ rules, regulations, standards, policies, and practices..." Central and regional office staff representing all aspects of unit operations thoroughly and comprehensively review unit adherence to policy and procedures. Lead monitors with the Operational Review Program are responsible for producing a report with specific responses for action required from the unit warden. The report then goes through a specific review process through the regional director and then to the prison division director. Critical to the integrity of the program is that the administrator of the Operational Review Program and her staff do not report to the prison division director but to the executive director of the agency.

The Operational Review Program does not depend only upon three-year reviews but also conducts monthly reviews through unit "compliance sergeants" that are also dual-supervised employees reporting to both the Operation Review Program and the unit warden. These monthly and three-year review processes help insure that critical policy areas that address sexual assaults are fully implemented and adhered to on a unit level. Mandatory reporting requirements, offender grievance policy and procedure, and the safe prison program are all a part of the operational review.

Central to each of these internal oversight systems is the ability to collect and analyze data, define indicators and establish performance measurements. Very early on in our efforts in addressing sexual assaults we were able to use information received from mandatory reporting of alleged sexual assaults to identify critical information. We analyzed reports to determine primary locations and times of assaults, the demographics of persons involved including weight and height differences, and classification of offenders most involved in allegations. This type of information was used to determine placement of additional cameras within cellblocks, placement of dedicated staff with the Safe prison Program, and highlighted

training and policy clarification needs. Data collected through mandatory reporting, grievances, ombudsman reports, and operational reviews provide not only critical information for unit management but gives central administration the necessary ability to see and address issues and concerns from a systemic view. To quote John Dilulio once again in his description of effective prison management, especially management focused on eliminating prison rape: "...successful prison directors and institutional managers...are highly 'hands-on' and pro-active. They pay close attention to the details and do not wait for problems to arise but attempt to anticipate them. While they trust their subordinates and do their share of paperwork, they keep themselves focused on the prisons and what is actually happening inside of them."

I have today, primarily focused on internal efforts that prison systems must take to insure internal accountability through viable oversight mechanisms. An additional system that is certainly critical to this mission is an independent Office of the Inspector General (OIG). In TDCJ, the Office of the Inspector General (OIG) is responsible for investigating criminal acts within our prison facilities. Policy requires that all sexual assault allegations also be reported to the OIG for full investigation by them as certified peace officers. They are also responsible for investigating staff misconduct to include not only criminal acts, but also significant policy violations such as non-reporting. The Inspector General reports to the Texas Board of Criminal Justice as does the Executive Director of the agency.

As I conclude I would like to address three mechanisms (two internal and one external) that provide a prison system an ability for oversight and accountability through an analogy cited by the current Executive Director of TDCJ, Brad Livingston. With a three-legged stool, each leg is necessary and critical to the integrity of that stool, likewise with the three primary tools that I believe are key to a prison system. The first leg is the operational review system that monitors specific policies and procedures, the second leg is a security audit process that reviews safety and security policies, and the third leg is an external review through the ACA accreditation process. All three together, with a committed executive leadership, provide for effective institutional accountability processes. I believe that is key – no single process can achieve the necessary level of oversight, but multiple levels can provide the means to operate effective, safe, and secure prisons with a vision and hope that can come to realization where prisoners can serve their sentence in a hopeful and safe environment.

"I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT. EXECUTED ON THIS DAY OF NOVEMBER, 2007."

Doug Dretke