Oral Testimony for Little Hoover Commission
November 18, 2010
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Good afternoon, members. I want to thank the Commission for giving me the opportunity of appearing today.

I'd like to comment on two subjects today. First, I want to give the Commission a very brief update on where we are in terms of improving health care within the prisons. Second, I'd like to comment upon the five-year-old reorganization of the corrections agency into its current form, a reorganization that I believe has made corrections essentially ungovernable.

Progress on Health Care

So first, where are we on prison health care? There are four major class actions involving prison health care. The *Plata* case involves medical care, and in that case, the federal court established a Receivership in 2006. I was appointed as the Receiver for medical care in 2008. The *Coleman* case, which has been going on for over 15 years, involves mental health, and in that case, a Special Master monitors the State's progress. In the *Perez* case, which involves the dental program, several court experts are advising the court on the State's progress. Finally, there is the *Armstrong* case which involves the Americans with Disabilities Act, where another court expert works with CDCR on compliance issues. My role as Receiver for medical care includes an overarching responsibility to coordinate court supervision in all four cases and to provide cross-cutting infrastructure for all of prison healthcare.

After many years of ineffective efforts to respond to these lawsuits, I can report that substantial progress is now being made in three of the four cases. I believe the State has finally started making good progress in the last eighteen months or so in *Perez*, the dental case. Adequate staffing has been secured. Appointments for services are being made and deadlines are increasingly being met. And we have an approved plan for improving dental treatment facilities to comply with the *Perez* stipulated injunction. There is pretty clearly light at the end of the tunnel in this case.

Steady progress is also being made in the ADA case, *Armstrong*. The State has identified the policies that need to be changed, there has been a lot of work to get those policies actually changed and then to implement those changes. We have a ways to go on full implementation, but fairly significant progress has been made to address the most serious and obvious problems.

With respect to *Plata* and the medical program, we are finally, after about eight years of failed efforts and chaos, seeing objectively measurable improvements. We are about 70% through the elements of my 2008 Turnaround Plan of Action, and with the agreement we

reached with the Administration and the Legislature on major construction, all elements of my plan have been funded.

In terms of results, the rate of deaths resulting from clearly inadequate care have decreased by 80%, and the rate of deaths that possibly were the result of inadequate care decreased by 7%. Putting these two figures together, we have seen a 26% decrease in preventable deaths. These same reports show an overall 16% decrease in medical lapses. In short, we are making fewer mistakes, and fewer preventable deaths are occurring.

In addition, we know from other reports that we are now doing a good job of treating the 21,000 patients with asthma. This compares with the situation four years ago when we actually had 6 inmates die from inadequately treated asthma. We are also making good progress on treating diabetes, which affects around 8,000 inmates. We're not doing as well with our cancer screening program, but we are now measuring the gap and moving forward.

I think that one of the most important overall improvements is that we now have systems in place routinely to collect patient-level and physician-level data about performance outcomes. So we have actionable information, and we are using that information to measure our performance and improve outcomes. I gave your executive director a presentation about our "performance dashboard" a few weeks ago, and within a month or so, I will be able to share the dashboard with all members of the Commission so you can see what I am talking about. I have also shared with your staff a slide deck that gives you a more comprehensive status report on our progress.

In addition to these quality improvements, in the last year we turned the corner on what had been spiraling costs. We began Fiscal Year 2009-10 anticipating our expenditures would be $2.146 billion. During the year, we implemented substantial changes to improve quality of care while simultaneously reducing unnecessary costs. The result? A reduction of $408 million in our expenditures. That is almost a 20% reduction in one year at a time when general health care costs are rising at a rate of about 10% per year. My executive team and staff in the 33 institutions deserve the credit for this success.

These were not one-time gimmicks. These were permanent reductions in operations costs. This is an extraordinary accomplishment in one year and proof to critics that the public sector is fully capable of healing itself if given the freedom, independence and direction to get the job done.

If our savings had come at the expense of quality of care, we would not have gotten our money's worth. After all, my primary job as a federally appointed receiver is to raise the level of care to constitutional levels and turn back to the state a functioning prison medical care system that the state will be capable of maintaining.

But as my prior comments show, we did not sacrifice quality of care. To the contrary, quality of care is improving, although much work remains to be done.

Over the next two years, we will complete the implementation of key health information technologies, including patient scheduling, a basic electronic medical record and telemedicine. These systems will improve quality and reduce operating expenses. We will be making some prison facilities improvements, and we will be prepared to move into three prison health care facilities in 2013, one in Stockton, one in Chino and one in Paso Robles.

So there is fairly rapid progress at this point in the *Plata* case.

Finally, I want to comment only very briefly about the status of the mental health program and progress in the *Coleman* case. I think it is fair to say that progress in *Coleman* has been somewhat halting at best, and the most recent evaluations by the *Coleman* monitors show that in at least some of our prisons, little to no progress has been made. Very serious problems still exist systemwide. In addition, we are starting to see an increase in contested court filings in *Coleman* and that is itself a sign of difficulties ahead for the State.

One of the most challenging obstacles to finishing the job in *Plata* and making greater progress in *Coleman* is the extreme overcrowding that exists in the prisons. The overcrowding issue is currently before the Supreme Court of the United States, which will hear oral arguments in the State's appeal at the end of this month, so I won't say more about that now.

That's my overall summary of progress in the health care class actions. Health care is, I think, a relative bright spot within CDCR. More work to do, but improvements have been made. If the Commission would like additional information about progress in the medical program, I would be happy to provide that information. For additional information about mental health, dental and ADA, I might suggest you ask Secretary Cate to make available to the Commission Ms. Sharon Aungst who is CDCR's director of health care programs.

Reorganization

For the remainder of my time, I would like to comment upon the CDCR reorganization. In my judgment, the five-year-old reorganization has been a failure, and it interferes on a daily basis with desperately needed organizational improvements within corrections.

The reorganization was supposed to improve lines of reporting and accountability. That hasn't happened. The only clear message externally from the reorganization is that the Secretary is apparently accountable for *everything* within CDCR. That is an unrealistic expectation for such a large organization with such a broad portfolio of operations. The result is a *decrease* in real accountability.

The reorganization was supposed to improve services. Not only did services not improve, but they substantially deteriorated. In the case of medical care, the deterioration was so

bad that the federal court established the Receivership. But other services clearly have suffered just as badly. Rehabilitation has been reduced to virtual irrelevance, and internal administrative services are in a state of chaos and disrepair.

The reorganization was supposed to reduce recidivism. It didn't. Recidivism is still worse than it was a year before the reorganization, and this is at a time when the violent crime rate is down 12.5% and the property crime rate is down 18%. It appears that prison remains a training ground for criminal activity.

In sum, the reorganization has failed to secure *any* of the benefits that were expressly listed in the reorganization plan submitted by the Governor to the Little Hoover Commission some five years ago. Judged by the standards identified in the plan itself, the reorganization has failed.

From my observations over the last three years, the reorganization's failure may be traced to several root problems which were actually exacerbated by the reorganization itself. First, the department is simply too big and has too broad a portfolio of very different functions for it to be managed as a single organizational entity. As a result, there is very little focus within CDCR. There is too much to do, and not enough time to focus.

Second, in addition to having operational responsibility for CDCR, the Secretary is also a member of the Governor's cabinet. This creates an especially bad situation where the Secretary must split his or her time between the demands of organizational operations and the more political demands of working with the Governor and Governor's staff, legislators and legislative staff, and other external stakeholders in the large law enforcement community. Particularly given the highly politicized nature of corrections and corrections policy in California, and the pressure put on the Governor's office by the modern 24-hour news cycle, the time the Secretary has to improve organizational performance and effectiveness is further eroded responding to or anticipating the next bad headline.

Third, in light of the chronic overcrowding in California prisons, which are operating at around 180% of design capacity, the primary focus within CDCR is on confinement. That is CDCR's *de facto* organizational mission, and that overriding mission tends to overwhelm CDCR's many other functions. The operational obstacles raised by overcrowding have been well chronicled elsewhere and subject to judicial review, so I will not rehearse them here again. Suffice it to say that the degree of overcrowding makes it very difficult, if not impossible, to provide inmates with access to *any* programs at all, and overcrowding puts inmates and custody staff on a hair-trigger for violence and resulting custody-based decisions to put part or all of a prison on a "lockdown" status where inmates are kept in their cells for up to 23 hours a day. Although the numbers vary substantially from prison to prison, it appears overall that inmates are in lockdown as much as 35-40% of the time, and one-third of the prisons are in lockdown more than two-thirds of the time. With this much cell time, it is perhaps no wonder that there is very

little rehabilitation going on. CDCR needs to return to the basics of how to run a prison to facilitate rehabilitation and other programs.

When the Governor proposed the CDCR reorganization, he spoke of "blowing up the boxes." The truth is that none of the boxes were actually blown up. The reality never matched the rhetoric. Instead, the boxes within corrections were simply fused together in an awkward marriage that has resulted in organization lethargy, in-fighting, and a confused matrix-management system. While the reorganization was well intentioned, the behemoth it created has been in a downward spiral ever since. It is time to correct this mistake.

So what is the solution? I believe we have to break CDCR up into smaller pieces based upon a few major organizational functions so that each separate organization can really focus on improving its function, and there can be better public transparency and accountability for improvements in those functions. A reorganization is not a panacea. It won't solve all problems by itself. But the wrong organizational structure – which is what we have now – can defeat even the most well intentioned efforts to implement organizational improvements.

Whether or not the remainder of CDCR is broken up, we need to formally remove prison health care from CDCR's management by establishing an organizationally separate, board-governed health care authority. This can be accomplished without spending more money or creating more bureaucracy. In fact, having a separate authority will make it easier to implement our savings program and to get our fair share of federal dollars in support of health care. Because of the Receivership, we are currently operating as a *de facto* separate department, and I don't think it is a coincidence that health care is the only major program area in corrections where you are seeing visible improvements in performance.

But spinning off health care is only part of the solution to fixing our correctional system. As I mentioned before, health care was not the only function that failed as part of the reorganization. As of today, the "R" in CDCR exists in name only. The parole system has seen repeated failures, and even at its best, is woefully under resourced. The juvenile program functions under the watchful eye of a state court judge. Even basic administrative functions such as accounting and human relations are in a state of utter chaos.

The good news is that a reorganization that splits CDCR into a few key functional components also gives us an opportunity to start making headway on overcrowding reduction and budget savings. Facing a daunting $25 billion shortfall in the budget, the State has no choice but to right-size our prison system. The only way costs can be reduced significantly in corrections is by significantly reducing the number of inmates, parolees and juveniles subject to State jurisdiction. The big money is not in waste, fraud or abuse. The big money is in program demand, and demand comes from the sheer number of inmates.

There are any number of ways of right-sizing a reorganized corrections. Here are my recommendations: First, in addition to spinning off health care, we should spin off the parole function into a separate Department of Parole Operations and, at the same time, divert tens of thousands of low risk offenders to local probation departments. They can handle that population better and at less cost than the State. I agree with Secretary Cate about the promise of the Hawaii HOPE probation program, and I'm looking forward to seeing whether that program works well in Sacramento County.

Second, we should abolish entirely the juvenile function at the State level. Over the last decade, the State ward population has dropped almost 90%, but the cost per ward has increased substantially. Time to finish the job and realign authority for juveniles to local government.

Third, all education, vocations and other offender programs should be lodged in a Department of Rehabilitation Services so that the corrections rehabilitation function can be rebuilt by a department that is focused on that one task. It is going to take awhile to rebuild this function, but in light of California's 65% recidivism rate, it is absolutely essentially for the State to develop credible, cost-effective, evidence-based programs for inmates. The crime rate is dropping. We've got to see reductions in recidivism as well.

Finally, Governor-elect Brown suggested during the campaign that we should consider a return to some form of indeterminate sentencing, at least for certain categories of crime, which would lodge significant authority over sentence lengths in corrections itself. The indeterminate sentencing system served the state well for decades at a time when our corrections system was the model for the country. Governor Brown's suggestion is well worth considering, along with a variety of other suggestions that have been made by corrections and sentencing experts over the last decade. We have no shortage of good ideas.

Whatever we do, we must do something, and we must do it quickly. The status quo is unacceptable, unsustainable, and it virtually guarantees continued judicial attention. Solving the corrections crisis can be part of the solution to the state's overall budget crisis. But it is going to require some strong leadership to get the job done.