

TESTIMONY REGARDING STAFF SEXUAL ABUSE IN
FEDERAL FACILITIES BY GLENN FINE, INSPECTOR GENERAL,
UNITED STATES DEPARTMENT OF JUSTICE

MR. FINE: Mr. Chairman and members of the commission, thank you for inviting me to testify about the work of the Office of the Inspector General regarding sexual abuse of federal inmates.

In April of this year, as has been stated, the office of the Inspector General issued a report that examined this issue. The report discussed the numbers of sexual abuse cases investigated by the OIG. The federal prisons highlighted the shortcomings of current federal law in deterring the sexual abuse by federal prison staff.

In my testimony this morning, I plan to briefly summarize the findings of this report. Our review concluded that current federal laws criminalizing staff sexual relations with federal prisoners are deficient. The federal crime of sexual abuse of an inmate is only a misdemeanor punishable by a maximum sentence of one year unless the staff member uses force or overt threats to

sexually abuse the inmate. Of course, prisoner employees control many aspects of inmates' lives. In most cases, prison employees obtain sex from inmates without resorting to use of force or overt threats.

In the OIG's experience that investigates sexual abuse cases involving correctional staff and inmates, we have found that misdemeanor penalties do not adequately punish or deter prison employees who commit this crime. In addition, the OIG has found that many federal prosecutors are less interested in pursuing sexual abuse cases involving inmates regardless of the strength of the evidence because the crimes are not felonies. The lenient federal laws are out of step with state laws. Unlike the federal government, 44 states make untoward sexual relations with inmates a felony.

It is important to note that consent is never a legal defense for prison staff to engage in sexual acts with inmates. According to federal law, all sexual relations between staff and inmates are considered abuse. This is based on several

factors.

First, staff members and inmates are in inherently unequal positions and inmates do not have the same ability as staff members to consent to a sexual relationship.

Second, inmates may try to use sex to compromise staff and obtain contraband or unauthorized privileges which can undermined the safety and security of a prison.

Third, either knowingly or unknowingly, staff members who engage in sex with inmates may be exploiting inmate's vulnerabilities. We found these factors present in many cases investigated by the OIG. For example, we often found that prison guards take sexual advantages of vulnerable or psychologically weak inmates. Such inmates include those who have drug addictions, previously or physically or sexual abused, who have mental health issues, or who have little experience in the criminal justice system.

We also investigated cases in which inmates have targeted staff for sexual relations to obtain

control over the staff members or to obtain contraband or unauthorized privileges. Staff sexual abuse of inmates is not a harmless or victimless crime. It presents serious danger to inmates, prison staff, correctional facilities and society. For example, nearly half of the subjects in OIG sexual abuse cases also smuggle contraband into prison for the inmate with whom they had sexual relationships.

Staff sexual abuse with inmates also can expose the Bureau of Prisons and staff to civil or criminal liability, undermine rehabilitation efforts and increase the difficulty of inmates successfully reentering society.

As we've discussed in our report, the OIG regularly investigates many allegations of staff sexual abuse of federal inmates. It is important to note, however, that the OIG does not have the authority to investigate violence by one inmate against another unless such action was done with the involvement of a DOP employee.

Inmate on inmate crimes, including rape or

sexual abuse in federal facilities are normally investigated by the FBI. Rather, OIG investigators are either on their own or sometimes jointly with the FBI investigate allegations involving staff abuse of inmates.

For example, in fiscal years 2003 and 2004 the OIG presented 163 sexual abuse cases for prosecution. Of these cases, 73 or 45 percent were accepted for prosecution. 65 of these cases or 40 percent resulted in convictions. However, we have found that even in cases where there was sufficient evidence to prove that a staff member sexually abused an inmate, some prosecutors are reluctant to prosecute prison staff who do not use force or overt threats to obtain sex from inmates often because the penalty is only a misdemeanor.

And even when prosecuted, the punishments for staff sexual abuse of inmates are not significant. The 65 subjects who were convicted of sexually abusing inmates, 73 percent received a sentence of probation. 15 percent what sentenced to less than one year incarceration. Only 8 percent were

sentenced to more than one year incarceration.

The OIG believes that the federal laws criminalizing staff sexual abuse of inmates should be strengthened to provide greater deterrence. Accordingly, in our report we recommended that legislation be enacted to increase the statutory maximum penalties for sexual abuse of an inmate from a one-year misdemeanor penalty to a five-year felony.

In our report we also recommended that the law be extended to cover federal prisoners held in contract facilities. Current federal laws covering sexual abuse of inmates do not apply when federal inmates who are held in facilities under contract with the Federal Government rather than in DOP facilities. This limitation also has hampered the OIG's ability to obtain prosecutions for staff who sexually abuse federal inmates incarcerated in contract facilities.

The OIG has found state prosecutors inconsistently prosecute these cases because many states focus their limited resources on sexual

abuse against state rather than federal inmates.

As a result, abuse of federal inmates held at contractor facilities may go unpunished because of limitations in the law's coverage.

Finally, I would like to make a few observations regarding staff sexual abuse of inmates. In considering this issue, I believe it is important to note the number of DOP employees who commit such conduct represents a very small percentage of all DOP employees, and that most DOP employees perform their duties in a professional and effective manner. They have challenging jobs without high pay and they generally perform their duties well.

Moreover, while they're having problems with abuse in DOP institutions, my belief is that sexual abuse of inmates is likely more of a serious problem in certain state systems than in the DOP. However, that does not mean that such abuse never occurs in federal facilities or that it is an unimportant issue. I believe that it is a critical issue that should be aggressively investigated and

punished.

I also believe that this commission can have an important impact by making recommendations to assist in these and related areas. And in this testimony, I have highlighted some issues that I believe are worthy of the commission's consideration.

Thank you, Commission, for inviting me to provide this testimony, and I will be glad to answer any questions that you have.

THE CHAIRMAN: Thank you very much. As I'm sure you know, recent legislation by the congress has made it more difficult for inmates to pursue civil remedies in federal court. In the context of sexual abuse in bureau of prison facilities, you think that legislation needs to be potentially amended to lesson some of the hurdles that prisoners have to make in order to pursue civil penalty or civil relief in the federal court system?

THE WITNESS: I would have to look more carefully at those issues rather than give an

opinion on that. I think the most important thing that we are focusing on is the criminalization of this conduct in ensuring that it is prosecuted. We see, as Senator Sessions stated, when it's not prosecuted, often there is little remedy for it. We've often seen that administrative sanctions don't have their intended effect. We see sometimes that the employee retires and that often he or she can get a job in a state facility and continue this egregious misconduct.

So we think that the primary thing that we're focusing on, I think, that needs to be addressed is the criminal sanctions that occur for this conduct. We have been involved in some cases where the civil remedies have been imposed, but I think the most important thing is the system in and of itself ought to insure that this conduct is ferreted out and aggressively punished.

MR. KANE: Mr. Fine, you focused on staff on inmate abuse and I gather that is your mandate and you further noted, and I didn't know this, that inmate on inmate abuse in a federal

facility is supposed to be investigated by the FBI.

Is that the case?

MR. FINE: That's correct. The offices of the Inspector General has limited jurisdiction. We have jurisdiction to investigate any misconduct by the Department of Justice employee, including the Bureau of Prison employee. We don't have general jurisdiction to investigate all crimes in the federal system. The FBI investigates those matters.

MR. KANE: Just in terms of people assigning importance to this particular crime, that is sexual abuse of an inmate as you and others have observed, Senator Sessions I believe as well, there is, perhaps, not anything like unanimity, but a serious matter. I wonder if you could help me out. What do you think the FBI thinks about its responsibility to investigate inmate on inmate abuse in terms of how serious it is or even offer, perhaps, some advice to us on how effectively that charge is carried out.

MR. FINE: That's a very good question.

I think that is something that the commissioner ought to look at and also have a witness from the FBI to testified, perhaps, at a future hearing.

I think it varies within the FBI and it varies sometimes within the field office and within the institution. I do think the FBI recognizes that it's an important problem, but the FBI is strapped these days. It has reprioritized its resources towards counter-terrorism and other very serious crimes sometimes do not get sufficient attention that it deserves because of the stretch on its resources.

We do know that. There are FBI agents assigned to some facilities and they are very aggressive about investigating any matters that are from other field offices. Sometimes the FBI does not have the resources to immediately respond and aggressively investigate the very serious crimes that do occur in federal facilities.

I agree with Senator Sessions that in many cases it is hard to spur the criminal justice system or the F.B.I. or the prosecutors to move

forward on inmate or inmate crime when inmates are serving longer sentences. I agree that it needs to be aggressively, effectively investigated throughout the system.

MS. STRUCKMAN-JOHNSON: I would like to follow up on the comment about it is a small percentage of employees who are causing the problems. In my research in the state facilities when asking in my surveys, the opinions, I came up with the interpretation that it appears to be a small number of staff who are creating the numbers or a large number of victims and you could tell that by inmate after inmate would report with the same pattern of abuse by, you know, like a pair of guards coming in about the same time at night. And my opinion was that there were probably three or four mavericks in the system who were, over a period of years, creating a large number of assaults. So, I'd agree with your interpretation there.

MR. FINE: Thank you for that. I think that is true. And that's the experience that the

OIG investigators have. They see that there's a pattern of problems within an institution caused by a few individuals. And when they go after them or when they take those individuals out of the institution, the same level of problem does not exist.

I think it's also very important that the Bureau of Prisons take aggressive and effective action on all misconduct matters against these individuals. When they let things go, when they let little things go, it undermines the safety and security of an institution that allows these people to continue with their efforts and it gives them the belief that they're going to go unpunished. I think the Bureau of Prisons has an obligation to take aggressive and effective action on all misconduct matters so that it doesn't be generated into a lawless institution, an institution where people believe they can get away with it.

COMMISSIONER FELLNER: I wanted to follow up with two issues: One, whether or not in any given facility you have a few folks who are engaged

in patterns of persistent misconduct. Generally, the knowledge of that misconduct goes beyond those two individuals. And our experience of Human Rights Watch is that usually there is a cover up, and that there are numerous people involved in cover ups. Either they just look the other way or they actively stand as lookouts. In a couple of the cases we cited involve lookouts or they simply take other action to protect their buddies. And I wondered if you believe that there needs to be more attention or even criminalization, need to be people who may not themselves be directly engaged in misconduct, but who may have a code of silence or who refuse to come forward.

And the other question I have has do with one of your suggestions is the need for independent oversight mechanism, in part for the obvious reasons and in part because prosecution of sexual offenses, whether it's in the free world or in prisons, the standard is guilty beyond a reasonable doubt and sometimes it's a he said, she said, and the evidence isn't there, so you need other

mechanisms to make sure that you does proliferate.
So I'm wondering if you could address the code of
silence, as well as what you envision the
independent sort of oversight mechanism to be.

MR. FINE: Certainly. With regard to the
involvement of other staff of sexual abuse by staff
members, it does occur. And we try to investigate
that and if there are instances where a staff
member actively aids or abets another staff member,
we have and will try to bring that person to
justice by prosecuting them.

But I think you are right that in many
instances there are staff members who have a sense
that it's going on, who know that there's something
unusual here, who know that it's unusual for a
staff member to be bringing out an inmate late at
night or being in a part of the institution where
they shouldn't be and they don't come forward to
report that.

They need to have secure mechanisms where
they can report it and realize they're not going to
be retaliated against by other staff members or

prison officials.

And that goes to the second question. I do believe there needs to be an independent entity that investigates these matters. In the federal system is the Office of the Inspector General. We are independent of the Bureau of Prisons. We're not relying on the Bureau of Prisons. We don't have in our mind what impact this might have on the reputation of the institution as Senator Sessions discussed.

We are there to take these reports, make sure people aren't retaliated against, to aggressively investigate them and to try to bring those folks to justice. I think that that is a model that one ought to consider for state systems and I'm not sure all the state systems have a state level of independent investigations.

We have found, we believe, that when an outside independent entity is charged and given sufficient resources to investigate these matters, you are more likely to find them, to deter them and to prosecute them. So that is another area that I

think the Commission ought to look at, the type of internal affairs investigative agencies that exist within the state systems, whether they are models that the Commission believes should be recommended more widely.

COMMISSIONER SMITH: One of the things that you mentioned, which I think is absolutely accurate, is the fluidity of the system, the fact that people are allowed to resign and then what happens is they move across state lines or even within the same state and into a state facility or even into a private correctional facility. So you've made very concrete suggestions about changes in the federal legislation. I wondered if based on Commissioner Fellner's comment and also on this fluidity whether you think it would be a good idea in either changes in the legislation that separate penalties for either failure to report or some sort of registry for correctional staff who are involved in these incidents and I asked that same question of Senator Sessions.

MR. FINE: With regard to the failure to

report, it is a misconduct within the Bureau of Prison offenses for failure to report knowledge of other misconduct or criminality. I'm not sure making it a crime would be effective or even prosecutable, but I do think the Bureau of Prisons should hold accountable those who they can prove have knowledge of it and failed to report it, held accountable in a disciplinary context. I know that the DOP does in some cases, as well as other Department of Justice agencies and I think that is an important deterrent to this kind of conduct to insure that those who know about it have an obligation and fulfill their obligation to report it.

Regarding the registry, I would have to look more carefully at that. I do believe it's important to insure that there is evidence of abuse that is noted and that when they resign, it doesn't disappear, that it's in their records and that the institution that is attempting to hire them may do their due diligence on these individuals and that the Bureau of Prisons cooperate with them to the

extent they can. The sort of registry of staff sexual abuse, I would have to look into the parameters of that before commenting on it.

COMMISSIONER SMITH: One thing that I would just note is that I've done a fair amount of work in the area of state laws, and there is two states, Florida and, I believe, Missouri that has separate failure to report provisions in their state criminal laws that prohibit sexual abuse of individuals in custody. And actually a number of states are moving to including staff who are involved in sexual abuse of offenders as people who should register as sex offenders. And that's perceived to be a strong incentive.

THE CHAIRMAN: If there are no other questions, we do want to thank you for your report and also for your willingness to appear and testify before us today. And I'm sure that we'll have further contact with you on some of these issues. Thank you and it has been a pleasure.

MR. FINE: My pleasure and I'd be happy to cooperate in any way.

THE CHAIRMAN: We did not build into the schedule a break. I know we probably need to give the reporter a short break. We'll take a five-minute break and then our next panel will be the real highlight of this hearing because it puts a human face on this issue of prison sexual assault because the survivors will be our next panel. So we'll take a five-minute break and then we'll proceed with our next panel.

(Brief recess.)

THE CHAIRMAN: I do want to thank all of you for your appearance here today. We have at this time survivors who will present their testimony here, Garrett Cunningham, Marilyn Shirley, Linda Bruntmyer, Tom Cahill and Keith DeBlasio.

I would ask that all of you please stand and raise your right hand and repeat after me and take the oath.

(Panel sworn)

THE CHAIRMAN: We'll note for the record that all of the witnesses did affirm that they have

taken the oath or the affirmation.

I don't know how you ended up being placed in this order, but since that's the order that was given to me we will have you make your presentations in that order. I know all of you have submitted written testimony. With your permission, those will be admitted as a part of the record and you can summarize those however you deem appropriate. Mr. Cunningham.