

HOW DOES OUR NATION CONFRONT PRISON RAPE:

THE MORAL AND ETHICAL QUESTIONS

THE CHAIRMAN: Next we have Mr. Michael Horowitz who is a lawyer and a senior fellow at the Hudson Institute. You were not present when I gave the oath, so if you'll take the oath.

(Mr. Horowitz sworn.)

THE CHAIRMAN: Thank you. I also would like to thank you for your personal assistance to me. You called me right after I received this assignment and your insightful information provided was very helpful and most recently in preparation for this hearing because of your political knowledge and contacts, you were able to open up some doors that I couldn't open up myself. Thank you.

MR. HOROWITZ: Thank you, Mr. Chairman. One of the great fortunes of my life that I've been in a position to be of whatever help I can be to this commission and on this issue.

Who would is think that the work of this, critical as it is, in times with the violence and

brutality, and as Ms. Lara has just described, would also place us and place this commission right at the heart of the debate over America's standing in the world at large, with Albogree (ph.), with Guantanamo, it is vital, the work of this commission, to do it right for reasons that even go beyond the fortunes of the prisoners. The stakes could not be higher.

An initial thought is that the key, in my judgment, to this commission's function is holding the feet of the Justice Department to fire to ensure that the surveys they do are solid and is unimpeachable as possible. There were some who approached this whole issue out of a sense that the American people were indifferent to the issue, thought that prisoners deserved whatever they got or that prison administrators were brutal and venal by nature.

I think the whole premise of this statute is a rejection of that idea. The premise is that the incentives are as skewed as can be. We have a world in which one prison riot and the prison administrator is on the carpet, thousand unknown

prison rapes, nobody cares. And indeed turning prisoners over to a handful of predators that keep the peace, literally under today's incentive structure, serve the interest, career, political interest of prison administrators.

To do the right thing, they've got to go almost against their own interests and beyond that. The American people don't have a clue as to the extent of the problem. They know it's out there.

I remember when we were starting on the statute, the administrator of one state prison just told us that oh, yes, in my state over the last six years there's been five prison rapes. Nobody could contradict him. Nobody knows. And in that void, the American people operating the state and local level, don't have the leverage to make a difference, a good example of that happened. And it will be pressure, in my judgment, from prison administrators and the model for that rank list order in the statute.

Years ago each education department of every state used to be ranked on the so-called wall chart in terms of performance of state educational

systems. It was a phenomenal device to put pressure on state education officials to deal with reading levels and discipline levels and it was a means of showing almost an inverse ratio of expenditure per pupil and performance. All sorts of myths were shattered that were comfortable with the education establishment. In that case, the pressures against the wall chart were so great that the system was discontinued after a few years.

Well now it's in the statute. Somebody would have to repeal that statute in order to discontinue it. But critical would be the quality of that chart so every state prison administrator will tell his correction officials at prison after prison that if you are the prison that is selected in the random survey and I have to come to Washington to explain myself or get called to the State Capital, you better start looking for new work. You create that incentive, I think it will be momentum for change and inducement for change. So keep your eye on it and, of course, you're lucky to have Commissioner Struckman-Johnson, who was the oxygen for many of us as we tried to create the movement

that enacted the Prison Rape Elimination Act.

Another point, I think the commission fails if in any way it engages in what would have been the standard traditional debates over prison criminal justice systems. When we started our coalition going, we began by saying half of the people in this room think we need to close prisons down and the other half think we need to build twice as many. Now, could we leave that important debate, and it is indeed a critical debate, off to the side not getting mired in that us against them, blue America, red America debate and see if we can't come up with something that will eliminate the evil of prison rape and violence.

So whatever one's judgment may be about too many prisons or too few, I urge the commission not to get caught up in that debate and to look for consensus issues which, I believe, may not be utopian, but will surely achieve extraordinary reform.

You have the power to create national standards on matters such as whistle blower systems, screening systems, training systems.

They're not high cost items. They're not high debate items. Get it right and you will achieve extraordinary reform and national consensus. At a national capacity, you achieve them.

A corollary to that principle is embedded in the statute. Don't get caught up in issues that involve significant additional expenditures. I've been in Washington a long time and one of the great failings in my judgment of Washington is that success is too easily measured in the terms of the size of an appropriation.

There are interest groups when Uncle Sam has got a kind of open checkbook that will surround and subsume any issue.

In the Department of Education, relatively small as Government agencies go, I once saw must have been eight, ten pages of a listing of the trade associations that have lobbyist focussed on the Department of Education, whether you're making audio visual equipment or architect or whatever, that's the mind that Congress did not want this commission in because there's so much you can do that is undone for which the country as a whole

will be behind you. And in that sense --

Let me add that there is one other thing that I don't think we focused enough on in the statute and that is predator isolation and control. I hope you will focus sharply on that because that's the key, not only to rape, but to violence. As I've said, some of the predators serve the political purposes, not the deliberate political purposes of wardens and prison administrators, but I think they serve their purposes by maintaining the peace. Well, don't give them that role. Issue regulations that will make it impose for prison systems to do so, whether through isolation or through whatever techniques come to mind, but a focus on the cause, the root cause, the proximate cause, the small number of predators who control and often run prisons, focus on them and I think again you have got an area of consensus across the country where you will have achieved extraordinary, indeed historic reform.

Hunt down the Albogree (ph). Texas has been mentioned. I've heard from many experts that California is another fruitful place in which to go

for prisons where this takes place. And I hope you do so.

Obviously, set as large a set, make it very, very clear that prison rape has nothing do with sex, it has nothing to do with homosexuality or gay lifestyles. Get gay leaders to join you in making that sharp distinction at whatever one thinks about -- whatever the debate may be about gay marriages or gay lifestyles or whatever they are. You avoid that. You again here in this area can achieve national consensus by having leaders of every stripe, including leaders of the gay community make clear that this kind of rape and violence has to do not with sex or sexual preference, but with violence and control.

This is a great commission. I've seen many commissions. I look at the balance, the expertise on this commission. Once you get over the snake bit problems you've had with commission staff, I think you have a prospect of, as I say to say it again and again, making history.

In order to do so, and I come again to that same theme, look for consensus. If you can't find

consensus on the issue of prison of -- what is it called -- sexual cohabitation amongst prisoners, it may be a controversial subject, but just list it as an area of disagreement, but come to the country in a united basis. And you're fortunate here to have a federal judge as your chairman. He knows what it's like to lock people up in a room. You may be able to do with this commission what you can't do with a jury, just turn off the air conditioning and tell this commission that it's consensus that the country wants from people on the right and the left and people from every persuasion. That's the great leadership role.

So many members of this commission will have very passionate ideas on some of the more controversial subjects. Persuade your fellow commissioners. But understand that in this business, one of the lessons I've learned in the Human Rights business, less is more. There are rippled effects when there is unity, when you focus on the worst evil and consensus solutions and begin to generate change, all sorts of other changes flow from that. You don't have to be the instruments of

every perfect reform.

Set it in motion, give the education and the leadership to the American people and it will happen in historic terms. Make sure this -- there will be one test. I want to conclude with one test of your success and one even further motivator for you to give your best to this effort. Lara mentioned it.

The issue of prison sex is the subject of jokes just like the issue of raping women used to be the subject of jokes. Find a politician now who makes a joke about a woman leaning back and enjoying getting raped. That politician lasts for a day before he's out of office and impeached and condemned as to well he should be, and yet we have the Attorney General of California talking about some corporate official saying what I want to do is get that man in a prison and some guy 6 feet tall with a earring will come up to him and say, hi, I'm Cookie. I'm your roommate. Let's be friends. He should have been sanctioned. In my judgment, he shouldn't serve as the chief legal officer in the state of California. There was no outcry about it.

Well, you change the basic terms of reference and that won't happen any more than it does about any other form of rape.

And I believe that the good will of the American people who just don't have the leverage and the means for addressing and attacking this problem will be with you all the way.

The final point, and it's motivating point, you have the opportunity to not only do the good for the prisoners, which is an achievement unto itself, and to show the world that America is a good country. We will never be a great country unless we're a good country and set an example that will deal with issues like Albogree (ph.) and Guantanamo and clear the air for truth rather than for wild charges when wild charges are made. But yet there's another incentive here and another historic role that you can play.

Conditions in prisons around the world in poorer countries probably in many cases make even our worse prisons seem benign. Each year the State Department issues an annual Human Rights report.

You do your job right, America sets an example. And America will have the leverage and the means to insist on humane and fair incarceration around the world as a basic human right.

I can tell you that many of us, if you do your job right, will have the means of insisting on legislative reforms that include examination of prison administration in foreign countries as a basic element in the annual human rights analysis that the United States does with other countries. Put us in a position to do so.

Well, to say it again, I think you have the tool, I think you have the skills. I think you have the desire of the American people behind you to get those annual reports in order to achieve consensus where you can on rather simple solutions. And if that's all you do, you will have made history. I have every confidence you will do so. Thank you.

THE CHAIRMAN: Thank you, Mr. Horowitz.