

HOW DOES OUR NATION CONFRONT PRISON RAPE:

THE MORAL AND ETHICAL QUESTIONS

COMMISSIONER FELLNER: I wanted to follow up on two things. One, when I was talking about violence and I wasn't conflating them, but where you find high incidences of prison rape, I think you also find high incidences of violence generally. And where you find either of those, you find mismanaged prisons.

One of the challenges that we're going to face as a commission is we can come up with all the policies we want and, in fact, many of the policies are already on the books. In fact, our correctional world, I think, has more policies than any country I know. The question is are they implemented? Does anybody really care to make them matter on the ground? So I wondered with the panelists if you have suggestions as to how this commission can go beyond simply proposing standards, but help motivate leadership as you spoke earlier.

And then the other question was specifically

for Mr. Horowitz. Congress, over many years now, for several decades has been quite focused on, you know, laws and getting people into prison and staying on prison. And this is one of the first pieces of legislation then followed by the legislation on providing funds to support mental health treatment in the criminal justice system in which Congress has recognized some of the unique problems and traumas that people in prison face. And I wondered if you see the beginning of a shift in Congress to look more closely at what goes on behind prison walls or if these were somewhat anomalous and don't represent any change. Those are two different questions I realize.

MR. RICHARDS: To the first question I think the way in which you have policy sort of a living thing that people are conscious of is make prisons transparent. Part of the problem is that prisons are in isolated community, that the only accountability is the accountability of how many escapes the administration prevents or had for the year. That's what they're measured on this terms of performance.

So I think we need to have a level of public scrutiny that holds the administrators accountable, not only for escapes, but for the health and reentry work of the prisons.

Again, I want to use Commissioner Horn as an example. He put together -- Commissioner Horn from New York City, Department of Correction, he put together a discharge planning task force of community based agencies and city and state agencies to come together to say, you know what's, let's make this prison transparent. Let's bring people into the prison.

So right now Fortune Society has an office in the control room where people are leased, where people come in and visit where we can engage. We can go up to the facility, pick inmates up from the facility and take them to our program, something that we've never been able to do. So the jail now in New York City has become transparent. And the measure by which wardens, their performance is being measured by violence, by reentry, looking at recidivism. So their scope went from pure custody and control to how well are we doing with bringing

people home.

MS. STEMPLE: I would agree that transparency is key. We are now working on a bill in California that addresses sexual violence in the prison and jail facilities in California. And one of the things that the bill calls for is and on bus person, an outside person not based within the Department of Corrections that would receive reports about sexual abuse and would have the ability to intervene and would also reported to the State Legislature on a biannual basis about the success and, of course, monitoring prea (ph.) and monitoring the piece of California legislation before it.

And I think that in addition to that on bus person, I would agree with what was said a moment ago, that allowing outside organizations to come into the facilities to speak with inmates and to send and receive confidential mail, as I said in my presentation, that's become an increasing problem of ours. And we're hearing numerous complaints. I don't know if it's because of the profile of the issue that's been raised, but we do see that there

seems to be a crack down in the mail, that we're allowed to send and receive into prisons.

MR. HOROWITZ: Now as to the question of whether or not Congress is likely to get involved more or less, we start with the first issue of federalism. It's a real problem. Incarceration for state crimes is a state problem. And Congress will get involved in it to the extent that Congress can have federalism sensitive and friendly acts that make a difference, that spark states, that encourages states, that provide techniques.

We haven't talked about the grant section of this to come up with creative techniques for dealing with the problem. Yes, I think you can get Congress to do it, but let me again come back to my almost Johnny one note theme. If you do a good job, Congress will get involved. If this commission gets mired or mires the country in the same old debates, important as they are about whether we should have more or fewer prisons or more or less male censorship or more or less lawsuits, Congress is going to be shy of getting involved again. So you hold the answer to that

question very much in your hands based on the kind of leadership and role you can perform in doing that most difficult of all tasks, limiting the scope of what you do, but understanding that doing it right provides that ripple effect and that supreme board effect. I hope that's a fair response to your question.

MS. SMITH: I actually want to add one point that's sort of been a consistent sort of -- I don't want to say tension, but a consistent theme that's gone through some of the testimony -- and I think that I want to make clear and I think we shared this among the commission that we really view our task to look broadly at prison rape, which includes inmate on inmate, whether that's male inmate on male inmate or female on female inmate or whatever the quadrant is, and also staff sexual misconduct with inmates.

I do know that there's a sense that there's been a lot of attention to staff sexual misconduct with inmates, but I want to say given a long history of working in that area, there's a tremendously long way to go there and I'm sure that

you've heard that particularly from the testimony of the survivors, Marilyn Shirley who talked about three years for a criminal prosecution and still being in the midst of litigation around that. So I think that we really have to focus on all of the quadrants of prison sexual abuse.

MR. HOROWITZ: I hope nothing I've said suggests otherwise. My point is to focus on the rape abatement issue, and from that all kinds of other structural problems will occur.

To take the issue that Commissioner Fellner raised, the good management issue. My judgment is if you can get people accountable for good management on the prison rape issue, which the people of every state in this country will and properly educate and insist upon, you will have the kind of commissioners that we've heard about like the commissioner in New York.

You're not going to have a commissioner who is tough on prison rape and indifferent to issues of rehabilitation. It all goes in the same package. So that this is a cornel which leverages us to broad and structural reform. But I hope nobody

here will think of narrowing the focus away from any of the three areas of prison rape that you just have described.

THE CHAIRMAN: Any other questions?

(No response.)