

INTRODUCTION OF REPRESENTATIVE SCOTT BY
THE CHAIRMAN AND REMARKS BY REPRESENTATIVE
ROBERT C. SCOTT (D. Va.)

THE CHAIRMAN: Congressman? It's a
pleasure to see you again.

CONGRESSMAN SCOTT: Judge, how are you?

THE CHAIRMAN: Just fine. I think we
were together last in New Orleans.

CONGRESSMAN SCOTT: One of those
conferences.

THE CHAIRMAN: One of those conferences.
It's a pleasure to have you here having known you

for a number of years and participated in various activities with you.

As I told Senator Kennedy, I'm not surprised that you were a sponsor of this legislation because I know of your commitment to Individual Rights, Civil Rights and Human Rights. I'm thrilled to have you here and I'll welcome any comments that you would like to make to us about our mission.

CONGRESSMAN SCOTT: Thank you very much, Judge, and members of the commission. It is certainly a pleasure to be here. First, I want to comment that Congressman Wolf would like to be here, but he is on the floor now handling the Thomas Jefferson State Appropriations Bill and it is up as we speak, so he could not be here, although he wanted to be here.

But I'm pleased to see the commission up and running. The law creating the commission resulted from the hard work over the course of two congresses of a bipartisan group of members in both the house and the senate and a diverse coalition of organizations and individuals dedicated to

eradicate and discourage rape in our prisons. With the law in place, we're now anxious for the commission to have its impact by setting the standards that drive that effort.

Prison rape has been shown to have a devastating impact on its victims and, ultimately, on unsuspected members of the public to become victimized by the rage, sexual transmitted diseases, and other manifestations of prison rape. Prison rape is recognized as a contributing factor to prison homicide, violence against staff and institutional riots. Not only does it cause severe physical and psychological trauma to its victims, it also increases the transmission of HIV aids and other sexually transmitted diseases, tuberculosis and Hepatitis B and C, all of which exist at a very high rate within prisons and jails.

And prison rape is a problem of sizeable scope. With over 2,000,000 people incarcerated today, it is estimated that one in ten or over 200,000 are victims of prison rape. Youths in adult prisons are five times more likely to be

raped than adults. Yet this problem has essentially been ignored as a societal problem.

Society pays dearly for ignoring prison rate. Inmates, often nonviolent first-time offenders, come out of prison experience severely traumatized and leave prisons not only more likely to commit crimes, but far more likely to commit violent crimes than when they entered. And the high incidents of rape within prisons and the high incidents of deadly sexually transmitted diseases also leads to their increased transmission into society at large upon their release.

Prison rape is a crime of constitutional implications. The Supreme Court held in former V. Brennan that deliberate indifference to the risk of prison rape violates the 8th and 14th Amendments to the constitution. The Court noted that while conditions may be restricted and even harsh, prison and jail officials must take reasonable measures to guarantee the safety of the inmates.

Because inmates are stripped of virtually every means of self-protection and access to

outside aide, the Government and its officials are not free to let the state of nature take its course. Prison rape is simply not part of the penalty that criminal offenders pay for their offenses against society.

The law establishes three programs as a requirement of justice, first the program to conduct an annual statistical study of the significant number of federal, state and accounting prisoners in jails for the incidence of rape and conduct public reviews of institutions where prison rape is 30 percent above the national average; second, a clearinghouse of complaints of prison rape to assess the prevention and prosecution and provide training and assistance to prisoner and jail officials and; third, a program to provide grants totalling 40 million each year to state and local governments and institutions for the purpose of enhancing the prevention and punishment of prison rape.

The law also provides for the establishment of this commission to develop standards for addressing

and eliminating prison rape. Once the Attorney General of the United States has promulgated standards pursuant to what you develop, they will immediately apply in federal prisons and state and local prisons and jails will be required to adopt these standards to qualify for the full range of federal funding available for use by prisons and jails, including grants under this law.

Finally, the law requires prison accreditation organizations to examine prison rape prevention practices as a critical component of their accreditation reviews. Importantly, the law is intended to cover all inmates and all prisoners in jail and to address the problems of inmates who are raped by their peers, as well as the equally serious problems of inmates who are raped by prison staff and contractors.

No detainee, regardless of whether he or she is held on criminal charges or civil detention, is to be excluded from any reports, nor be exempted from the protections provided under any standards related to this legislation. In the end, most

importantly, the elimination of prison rape is a moral imperative.

Prison rape is nothing short of prison torture, severe, emotional and physical pain as punishment and coercion. Long after bodies have healed, the emotional trauma, shame and stigma of brutal and repeated prison rape lasts and embitters.

Whatever the crimes of the inmates and whatever the prescribed punishment is for those crimes in a humane society, prison rape must not be part of it. Prison rape not only derails justice, it destroys human dignity.

This is long overdue legislation. And I'd like to express my appreciation to my colleagues in the House and Senate, Congressman Wolf, Senators Kennedy and Sessions, who were chief sponsors of the legislation along with me. I would also like to express my appreciation to Michael Horowitz and Benny Sheraldi (ph.), leaders of an amazingly diverse coalition that supported and promoted the legislation for their vision, leadership and

dedication of bringing this matter to the forefront and keeping it going.

Mr. Chairman, the ball is now in your court as the commission established to spearhead this effort. From what I've seen of your backgrounds and work on and dedication to this cause, it gives me confidence that you're up to the task.

I will continue to work with my colleagues to do what we can do to facilitate your job, but we're now at the point of the Nike promotional phrase, which says, just do it.

I want to thank you for just doing it. Thank you and God speed to you for your responsibilities and aspirations. Thank you, Mr. Chairman.

THE CHAIRMAN: Thank you very much for that statement.

Any questions, comments?

COMMISSIONER FELLNER: Thank you. Thank you for all of your work to get this legislation passed. I wondered if you could speak to a matter which was raised earlier this morning about the particular vulnerability of youth who are sent to

adult prisons in many states across the country, and, in fact, 40 states across the country, youth under the age of 18 can be tried as adults, in some cases youths as young as 13, 12, 10. And once they're tried as adults, they can be sent to adult prisons which research suggests that they are particularly vulnerable to be raped and I wonder if you wanted to comment on that.

CONGRESSMAN SCOTT: All of the studies show that youth in adult facilities are much more vulnerable to being assaulted by other inmates and staff than if they were in juvenile facilities. It is a particularly absurd process because we also know that when we codify the slogan if you do the adult crime, you do the adult time, one thing we do know is that the crime rate goes up. So it is not only endangering to children, but it actually increases crime.

Virtually every state in the union finds very serious offenses as adults already. So as we consider legislation and increase the number of crimes of which juveniles are treated as adults,

we're talking about marginal offenses that would not have otherwise been tried as adults. And those we know there's a question as to whether they'll get more time or less time in the adult court. But we do know that the crime rate will go up because the adult judge can only sentence them to time with adult criminals, rather than juvenile services.

And at the end, adding on the much higher likelihood that they'll be assaulted, the crime rate goes up. So it is a questionable practice of trying many juveniles as adults, so perhaps needed to be tried as adults, but when we have legislation before us, it's to increase the number. There's actually legislation pending passed the House being considered by the Senate that has trying more than juveniles as adults as an essential portion of that bill and that will endanger children and increase the crime rate.

MR. NOLAN: Mr. Scott, we very much appreciate your leadership on this issue. One of the issues that appears to be cropping up is that the Prison Litigation Reform Act placed barriers in

front of many prisoners pursuing their complaints about being raped in prison. It's come up pretty regularly in our meetings and hearings and I hear that from facilities around the country. And I would hope that mighty legislative forces, you, Mr. Wolf, Mr. Sessions and Mr. Kennedy which spearheaded this effort, might be willing to take on that and I just wonder what you think the climate is because it seriously appears to be impeding the ability of inmates to get regress from being raped.

THE WITNESS: Mr. Nolan, I appreciate your hard work on this bill too. You were one of the leaders that helped us to get it passed. It would be helpful if we could have some specifics from people that had complaints blocked by the legislation. The prison reform, the prison litigation reform efforts are very popular. Because most of the complaints, in fact, are privileged. The problem is that if you, with a broad brush, stop all of the frivolous suits from coming in, not knowing whether it was frivolous or

not when it came in, you block a lot of very worth while cases. So if we can have some specifics, it would be helpful to deal with that.

But, I can tell you those litigation reform efforts are very popular because that just means that you're beating up on prisoners. That makes it appear that you're tough on crime. If we can show that it's having a detrimental effect on a specific class of complaints, it would be helpful.

Now this legislation provides for getting the complaints to the authority a little better, so perhaps the prison litigation may not be the methodology for getting your complaint heard. Hopefully, this bill will help. But if you can get specifics on showing how it did hurt, that would be helpful.

I mean the fact is most of the cases are frivolous. Some of the cases are very meritorious. And trying to tell the difference coming in, you have to put up with some aggravation of hearing some frivolous cases if you're going to actually consider those that are worth while.

MR. KANE: Congressman Scott, just a follow-up question. I'm unclear as to which legislation you're talking about when you seem to suggest that maybe this or that legislation is a more appropriate way of making provision that might be specifically tailored to complaints about sexual abuse.

CONGRESSMAN SCOTT: Well, this legislation requires a process for hearing complaints as part of the accreditation. Perhaps in your accreditation standards, you can ensure that there is, for at least this issue, a meaningful way to complain as part of the prison standards, but I can tell you the blocking of complaints of prisoners is very popular. And so what we need to do is make sure that these complaints don't get blocked.

MR. KANE: I don't want to belabor this. I think we all know appearing to be tough on crime in whatever way you're hearing that way is usually probably politics. But, as we've heard from witnesses here, filing complaints within the prison

system is, let's say, hazardous. So the ability of the complaining victim to go to the courts is -- I mean I'm asking you if you're trying to help us open a way so that the rape victim can get to the courts and get outside of the prison complaint system.

CONGRESSMAN SCOTT: I would hope that the prison litigation legislation does not block these cases. That's why I need the specifics for the complaints that have been filed and dismissed, so we can review those. But, it's my understanding that this commission can recommend standards and you can put what needs to be in there. And if you have a policy, perhaps even an independent process or complaints, whatever you come up with in terms of how these complaints are going to be processed, that would be part of the standard.

MR. KANEB: I think if any of us listened to any of this testimony from the panel of victims this morning, we heard clearly right across the board that they have a feeling that reporting within the system is a very, very, long shot in

terms of getting relief, much less redress and we're going to have to focus on that. And we obviously know many people have tried to crap that. It's not going to be easy. We really have to do that.

COMMISSIONER FELLNER: I appreciate your comments on the Prison Litigation Reform Act. I think you, as other people who have talked to prisoners and know the situation, know that while there is much public belief that prisoners only complain about creamy peanut butter versus chunky peanut butter, in fact prisoners have very serious concerns which do not get relief or redress as Commissioner Kaneb just mentioned. And one of the things that maybe congress can consider would be to exclude from the coverage of the PLRA complaints that involve staff violence, staff sexual abuse or inmate violence failure to protect.

It should not be that difficult to carve out areas which are not subject to the very restrictive notions, not just on grievance, but other aspects of the PLRA that make it difficult to get relief.

And I also just wanted to rely on that. I have to. I can't not remind the audience as well as each other that it's the victims of Allen Gray, those who had dogs sicked on them, those who were forced to stand with electrodes, those who were hooded and put in piles, if they had sought to bring a suit in the United States, the PLRA would have prevented them from bringing a lawsuit.

CONGRESSMAN SCOTT: You've mentioned some of the anecdotal strategies of dealing with legislation where you come up with some silly anecdote that the legislation would cover and fail to mention the fact that it covers a lot of other kinds of cases too. That problem isn't just confined to prison litigation. All kinds of litigation reform is subject to the same kind of anecdotal silliness. We'll look into this legislation to see what we can do on that.

We'll do what you can do administratively. It's tough dealing with these because I mean we're talking about the juvenile justice, the gang bill. Everybody knows that after school programs reduce

gang membership, but you're subject to the cries that all we're doing is creating arts and crafts for gang bangers. If you put midnight basket ball program in an area, you reduce crime. You have to sit on the floor and listen to somebody talk about crack heads playing basketball in the middle of the night. So I don't know what they're going to come up with to describe this situation, but we'll do the best we can.

COMMISSIONER FELLNER: Your patience with some of your colleagues is -- (laughter)

THE CHAIRMAN: Well again, thank you, Congressman, for your presence here today and for your supporting this legislation.

CONGRESSMAN SCOTT: I want to apologize for Congressman Wolf. He wanted to be here, but he is on the floor.

THE CHAIRMAN: Thank you for your presence. Thank you.

We will adjourn at this time and resume at 1:15 for two additional panels. Thank you.