

Public Meeting
National Prison Rape Elimination Commission
at the University of Notre Dame, March 31, 2005

Dr. Schwartz, you have been involved in emergency care as I understand, in reference to institutions and have a wealth of knowledge about fixing problems. Can you give us your view on this issue?

Schwartz: Yes. Thank you, Judge. Actually emergency preparedness is one of the major areas. First, I'd like to thank the Commission for inviting me. I'd particularly like to thank the Law School for hosting this and the law students for organizing it. I would mention, before I begin, that my wife and I have two children and our son is a lawyer who's been practicing about five years now and he married a woman he met in law school who's also a lawyer, and our other child, our daughter, was in graduate school and saw the error of her ways and is now a 2L at the University of Hawaii and our son and his wife have our first grandchild, a 20 month old, with one on the way, and we understand that this winter both our current grandchild and our prospective grandchild are scheduled to take the _____ (715) so that the bills for law school tuition can continue unabated. With that, I want to talk, some of this is, almost all of this is so serious and stories as we've heard, Steve's testimony, the testimony this morning from Mr. Parsell is so heart wrenching, I want... (end of side 1)

...success story. And I think there's something to it and at the end of that I'm hoping that it'll make, I really have a success story and then two theses I'd like to make through that. The current Shelby County Jail, which is greater Memphis, opened in 1981. It is a Sheriff's jail, it is only pre-trial, there's a separate facility and a separate county organization that handles convicted inmates that don't go to

the state system. Over the next 25 years the Shelby County Jail grew to over 3,000 inmates, about 55-60,000 inmates are booked through that jail each year. You can think how many lives are touched, perhaps a couple hundred thousand in that county. The Shelby County Jail also quickly developed a well deserved reputation as one of the worst big city jails in the United States, designed for 1,100 inmates, the jail was dangerous for staff and inmates alike, assaults, stabbings, suicides, escapes and rapes were relatively commonplace. The jail was filthy, in poor repair, staff were unprofessional, excessive force was a well established pattern, inmate gangs controlled the living units in the Shelby County Jail, and in the late 1990s a sergeant on staff at the jail was murdered on the streets of Memphis in retaliation for having not taken direction from the gangs within in the jail. Food service, mental health, medical service in the jail were deplorable. Crucial other functions in the jail like classification were either dysfunctional or simply didn't exist. In 1996 the county, Shelby County, signed a Consent Decree in the case of Darius Little v. Shelby County. Darius Little was an inmate repeatedly raped over several days by at least three inmates and perhaps five. That case had been consolidated with two other 1983 actions brought by inmates for rape within the jail and failure to protect against other inmates. It was certified as a class action. The county had successfully ignored a previous Consent Decree on conditions in the jail so they quickly set about following their prior success and ignoring the 1996 Consent Decree. The judge overseeing the case was a very senior judge who died in 1998. The case was inherited by a different federal judge who grabbed the case with both hands, which is not a pun about the hands off doctrine. The judge is John McCarrah. In 2000 Judge McCarrah entered a Finding of Contempt against Shelby County on all five major components of the Consent Decree, including, importantly, supervision of inmates, failure to stop inmate-on-inmate violence, specifically protections against rape in the jail, which were the heart of the case. At the urging of Plaintiff's attorney, lead attorney, Judge McCarrah announced that he

was considering punitive sanctions, which might include putting the county mayor, the sheriff, and, (it is a sheriff's jail) and the jail chief in jail or prison, or fining the county somewhere between 7 and 51 million dollars or both. He also mentioned putting the system in receivership as a possibility. That discussion and that finding of contempt turned out to be the 2x4 that got the county's attention. On the heels of the contempt findings, Civil Rights Division of the U.S. Department of Justice, either Special Litigation Section, released a report on the jail that was highly critical based on their coming in and investigating after national publicity about Thunderdome, a situation in which some of the jail staff had organized fights among some of the tougher inmates and then bet on the fights, that kind of thing. The U.S. Department of Justice, Civil Rights Division report ended with a suggestion that Shelby County would either enter into a stipulated agreement with the OJ or DOJ would initiate a second federal civil action. That brings us to the turnaround of the jail, which has occurred in approximately 3-1/2 years. The county developed an extremely ambitious compliance plan which the Court didn't approve but granted a leave for the county to try. The county signed a very demanding agreement with DOJ. I was involved in those. I've been involved as both an expert witness, initially as a consultant sent to the county by the National Institute of Corrections which has played a key role in the turnaround there. So I've both been expert witness and consultant. From mid-2001 until now the jail has been more transformed than overhauled. The key elements of the turnaround have been strong, positive leadership from a new sheriff, a very strong jail chief and changing the jail to direct supervision so that staff were actually in the living units. Today serious violence is extremely low in the jail. There were, in the last two years, no homicides, no weapons assaults on staff, few medical deaths in custody, two escapes, no riots or disturbances, two suicides, one possible rape that's not been verified but may or may not have happened, staff don't know. Gang control of the living units is virtually zero. Gang activity in the jail is virtually zero today.

That story leads me to two theses. First, rape in jails at the pre-trial level is categorically a different problem than rape in prisons. And it's got to be looked at differently. Rape in jails has much more in common with suicide in jail. Suicide in jails is perhaps 9 to 10 times the rate in the general population. Suicide is at the highest risk the first 48 to 72 hours of incarceration; highest risk are young inmates, highest risk are first offenders. Similarly, jails have a rape problem that is not with long-term incarcerated people forming patterns, cliques, and long-term cell mates. The jail rape problem has to do with having lots of people coming in and out and not knowing who you have, and sometimes in holding tanks or large holding areas or large cells having predatory, violent inmates in with passive, weaker or non-violent inmates. So they really are quite different. And what works to stop rape in prisons is not necessarily an answer to the jail problem and vice versa. My second, and even within jails, it is the pre-sentence inmates where the largest problem is, is sentenced inmates in county jails. That issue will be very much like the prison issue and somewhat less severe. The second thesis is that rape in prisons and jails absolutely does not exist in a vacuum and prevention efforts will not be able to be laser-like. And I found the discussion here today extremely interesting, encouraging. But there's a real need to make dictum. The discussion of, as Dave was saying and Nancy echoed, the taking 10 and 20 and 30 years increasing consciousness, the analogies to where we stand about smoking or where we stand about jokes about alcohol. It will take awhile to get there in terms of awareness and change of attitudes. That's one side of the coin. There's another side and that has to do with how we operate institutions. If you have a jail where murder, stabbings, disturbances, gang control is relatively high, I promise you you've got a rape issue. If you have an institution, prison or jail, where those elements are extremely low, I would promise you that the rape issue is low. In sentenced facilities, rape is emblematic of a poorly run institution. It is not going to occur with any frequency in a very well run institution. And it will occur where you have other sorts of

violence. And you can't fix it by itself, so to look for a silver bullet for rape, it's not going to be out there. We do have a fix. The answer is not easy, it's fix the institution. And that can be done and it is done around this country. Institutions like Shelby County, which is hardly perfect today but it's on an awfully trajectory. And institutions are fixed and are turned around. Other institutions go downhill. Whole departments like the California Department of Corrections, and I'm from California, fall off the edge of the world and things get much worse. The California Youth Authorities' done the same. Now if you fix the institution, you will fix much of the rape issue. And that doesn't have to wait for 10 or 20 or 30 years. So, I know that both of those issues and the issue of staff sexual misconduct, which is very different, do have one commonality. There is one thread that runs through them, and that's the culture of the institution and the department. And that has, perhaps, more to do with staff sexual misconduct than inmate-on-inmate violence. But to fail to recognize rape as simply one of a number of very serious manifestations of inmate-on-inmate violence, failing to protect inmates from other inmates. As a result of failing to run institutions anywhere near as well as we know how to do today, is to leave inmates in a vulnerable and victimized position absolutely unnecessarily. Thank you.