

PREA Testimony Regarding Confidentiality

Mr. Chairman and other members of the Commission, it is my pleasure to meet with you today to discuss something which is critically important to every prison administrator in this country, how to manage those offenders who have been sexually abused or allegedly sexually abused while in custody. I doubt you will find one prison administrator who would say even one case of abuse by other inmates or staff is acceptable and we must deal with even the one case in the most efficacious manner possible up to and including prosecution whenever possible.

The discussion this morning comes from balancing the needs of confidentiality in a prison environment. I have been asked to testify this morning about absolute confidentiality and whether treatment staff should be allowed or required to maintain absolute confidentiality when discussing the sexual abuse of an offender. This absolute confidentiality would allow for treatment to be provided to the offender who had been abused by qualified staff or in some cases contractors/volunteers without "prison" staff becoming knowledgeable of the abuse or involved in the process.

The ethical dilemma of whom to share information with in a prison environment is probably as old as prisons are themselves. On one side is the desire that the information not be shared with those who do not have the sensitivities to handle the information in a professional manner. On the other side is the need to keep staff and inmates safe and the institution secure. I am going to limit my comments to an offender who indicates they have been recently abused.

In discussions with professionals and advocates, the suggestion was that nothing would be told to the prison staff. How about information relating to a crime? As law enforcement officials we have a duty obligation to report crime. In fact, when reviewing the monograph, “Breaking the Code of Silence, Correctional Officers’ Handbook on Identifying and Addressing Sexual Misconduct,” (2007) it says “...misconduct with offenders affects correctional staff by:

- jeopardizing staff safety
- threatening agency and facility safety and security
- creating the risk of legal action - both criminal and civil
- creating health risks
- harming family relationships
- creating negative public views of corrections
- diminishing trust and morale of staff and offenders
- weakening respect for, and the authority of correctional staff among offenders.”

This monograph is written specifically to combat sexual misconduct of staff toward inmates and articulates the necessity of prosecution and criminal penalties, but I would argue many of the same factors face correctional administrators as they are dealing with sexual misconduct of inmates toward other inmates. If we do not enforce or attempt to enforce the law and regulations because we know nothing of the behavior, then how do you attempt to deter these behaviors.

In our system, when someone comes forward with a statement they have been sexually abused, three entities become immediately involved. First, medical staff to determine if there is any physical harm to the offender. Also, if a crime has occurred, it is either this medical staff or

community medical staff who must act to preserve evidence. Second, mental health care to ensure that someone is discussing the trauma of the abuse with the offender as well as the resources available to the offender and the investigative arm of the agency to determine if there is a crime and/or rule violation and what action is to be taken. It is hoped this is accomplished with professional sensitivity, but each of the component parts is important to maintain the safety of the offender and the security of the institution.

In the recently published, "Violence in California Correctional Facilities: An Empirical Examination of Sexual Assault," (2007), there is significant dialogue regarding inmate housing compatibility. The nexus of what the study says about housing assignments is you have to be careful in housing offenders. Any unit manager or correctional administrator knows this. But again, if there is absolute confidentiality regarding an incident of sexual abuse whether real or perceived, administrators will not know this information. Without it, a correctional officer or unit staff member may house the offender with the perpetrator's best buddy or worse yet the perpetrator himself. This is especially relevant when you look at the issue against the broad spectrum of inmate clicks, ethnic groupings and the like. If this information was not available to correctional personnel your decision in housing an offender may in fact be a death sentence.

Finally, much has been said about the victim having to suffer when information becomes known about him or her and abuse by either staff or inmates. The realities of prison life are that these issues are difficult and sometimes the victim does end up in administrative segregation until alternative arrangements are made. However, as I once told a mother on the phone, I would rather your son come home to you alive and in one piece, even if that means I have to keep him

locked down, than to come home in a coffin because I did not take steps to ensure his safety.

Absolute confidentiality is a nice ideal and in an ideal world, I would concur wholeheartedly, however, prison life and the practicality of correctional administrators maintaining safe and secure confinement does not allow for this naivete.

Thank you for the opportunity of comment. I will be happy to attempt to answer any questions you might have.

I declare under penalty of perjury that the foregoing is true and correct. Executed on this 14th day of November, 2007.

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