

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

Chairman: Thank you, doctor. We have an hour left so I think the Commission will ask you some questions and then we'll hopefully get some participation from the audience. Mr. Babbitt, let me ask you, I'll take the first question. From your perspective, what if anything do you think the institutions where you were could have done to have protected you from what happened?

Babbitt: Could have gave me a cell change.

Chairman: A cell changed to a...

Babbitt: Another cell.

Schwartz: Steve, can you speak into the mike? They're having trouble hearing it.

Babbitt: It could have allowed me to get a cell change.

Chairman: Was the availability of requesting that change...

Babbitt: I was told 'We don't allow you to pick and choose' which means, you don't choose your husband, we choose your husband. It's a euphemism. Choose.

Chairman: So have you made a complaint?

Babbitt: Basically, what you have to do in a situation like that, and I'm keeping in mind my memories of, for example, the riots in the prison in New Mexico where they bashed in the doors and took the snitches out and burned their faces off with blowtorches. Keeping that in mind, you know, I don't want to snitch on anybody, so basically, and most people don't, but in some prisons you just go in, you say 'Look, I need a cell change' and they'll be like, 'Okay, I can look at you and I know you've got a

250 pound Celly whose a member of the Arian Brotherhood and I think I'm going to give you a cell change.' You know, no problems asked. In other institutions they might just say, you know, 'Why do you need a cell change? Is he assaulting you?' And they'll ask you a question that they know you're going to say no in most cases. And you say, 'No, it's nothing like that. I just need a cell change, I need to be in another cell.' And they'll just say, 'No, we don't allow people to pick and choose, sorry. Go back to your cell' or something like that. And there are institutions in Ohio right now where I know they routinely, up to the discretion of the unit manager, when a person comes in without snitching, they already kind of understand. They look at the person, they look at the cell mate, they look at the histories of the people and they say, 'Yeah, these people probably shouldn't have been cell mates to begin with. I'm going to give you a cell change. Do you know where there's a cell where you could go where you could be safe?' and usually a person knows already, 'Yeah, there's a cell down there with another smaller person that would leave me alone' or whatever. 'I'd be happy to move down there' and it's just done. It's just paperwork. I talked to Terry Collins who's kind of the Director of Prisons in Ohio at a Senate hearing in Ohio and he was like, 'Yeah, it's easy. They just have to do a little paperwork.' But some people don't want to do paperwork or they just, for one reason or another, just don't want to let an inmate come in and ask for anything and give it to them. So, there should be like, to me there should be like a standard procedure, and there already are in some prisons in Ohio, the same, it's not standardized. In some prisons in Ohio, for example I think it's Rosh, you can send in a kike and say 'I want a cell change' for whatever reason. And after so many days they'll give you one, and they'll give you one again sometime if you need one. It could be for whatever reason. That way you're not necessarily saying I'm being snitched. Now right now if you were to get a cell change in the prison I was at, if you did get one, they'd be 'Oh, he just got a cell change. He just told on his cell mate.' Then you've got the cell mates, my

particular cell mate, his little group that he was with, killed a juvenile while I was there, so I had good reason to be afraid of him and his group and he even told me, 'Don't ever try to get a cell change' and stuff like that, because if I ever did, they would know the only way I could get one is to basically say I was being assaulted or something like that, you know. And then even then, usually if you say you were being assaulted, they're going to throw you in the hole because they say they want to put you in there for your own protection or whatever. But really, half the time it almost just seems like that's kind of a way of discouraging people to ask for cell changes, because you know they don't really want to mess with it. They have to do paperwork, like I said, and so... In that particular case, you know, that was kind of like, kind of like a solution that I came up with a while back and I've talked to different people about it, is that if they at least have standardization to where a person could go to the unit manager and say 'I want a cell change' you know, and they could allow easily, it's like if you haven't had a cell change in 30 days or so many months or whatever, because there's other dynamics involved, too. When you're in a cell and your cell mate knows that you can't move under any circumstances, then he knows he's got you. You can't go anywhere. You're stuck. And when he knows he's got you, then he can start working on you. Now if he knows you can get a cell change, he might be a little bit nicer, 'cause you might say 'Well, this is really a pretty nice guy and he's clean. I might as well just try to keep him here, he's a decent guy.' But if he knows you're stuck there anyway, he can take full advantage. In other words, he gains power by knowing that he's in complete control. He's going to be in control till either you or him move. So it even changes the whole dynamics and it changes the dynamics from the aspect of the victim, too, 'cause I'm sitting there thinking, I'm stuck with this guy forever. He's going to be here for a year or more and so am I, and that makes me even weaker and more tempted to give into whatever coercion there is because I know I can't get away. Because if you know you can't get away, it's kind of like, it

changes your whole thing, you know, your whole kind of, the way you view the situation. Whereas if you knew you could get away, you have more confidence and okay, I can get a cell change in a few days so all I've got to do is hold off and try to be, you know, do what I can. It's kind of hard to explain but, that's kind of the way it goes.

Chairman: Thank you. Any of our Commissioners have any questions?

Fellner: I wanted to ask Commissioner Donahue what he thought about what Mr. Babbitt was saying and how his department handles that very real problem, the vulnerability of somebody who snitches or would be perceived as snitched if he requests a cell change to avoid an abusive situation.

Donahue: Well, there's several techniques that we use obviously and Steve is the unit manager. Every housing unit has a management structure, staff management structure that oversees the performance of that housing unit, everything from the daily activities that occur, to programming components. And one of the things that we try aggressively to manage in our system is to encourage staff to have routine availability. All too often you'll see administrative positioning occur in institutions where staff work from what I'll call the traditional 8 to 4 day and that's something that, in my short tenure at Indiana but in my 25 years in the business, it's a 24 hour a day, 7 day a week operation. Management staff, the decision makers, are policy makers in organizations, have to make themselves available to the facility. I manage by walking around. I have that expectation of the superintendents that are assigned to the facilities and likewise unit management staff have that same responsibility. A lot of the facilities, by the sheer nature of design, would preclude some of the activity that Steve refers to. Low custody confinement, minimum custody and medium custody housing units are routinely large domiciles, multiple

offenders placed in large rooms. Believe it or not, mass promotes safety because there's a lot of eyes and a lot ears that observe behavior. We have the more secure institutions, close custody or maximum security, we have a lot of single cell confinement which promotes obviously, isolation. But you do have a sector of the facilities that require double occupancy because the nature of capacity management. It's those institutions that we really have to pay attention to because as Steve indicates, staff become complacent. Offenders manage, process and outcomes as well as staff do in some sense and so by observation, by candid awareness, staff can learn what is occurring in an institutional setting, behavior management for lack of better terms. If staff observe, they can ultimately make out....

Fellner: But what about this specific thing that if cell is routine? If you have that option, that you know every 30 days you can just pick up your scant belongings that you're allowed and move, that would that be a way of preventing cell mates from acquiring power over each other?

Donahue: Well, my first reaction to that is, just the frequency of the move creates potential chaos. In some institutions you have long term confinement, literally, as the prosecutor alludes to. You know, have guys doing 20 or 30 years. And stability for those offenders is very important. Routine is important. We're all creatures of habit. For the sake of promoting safety that may in fact, I would have an opinion that would exasperate that because of the potential of placing offenders together that could ultimately create conflict. So I'm not as inclined to suggest that's a solution as I am to observe behavior, to make myself available, and staff available very frequently in the housing units to observe the environment instead of making it a convenience move for the disruption of all the offenders.

Nolan: What do you think about what he said that unless it's granted routinely and you know the phrase repeated 10,000 times, then you ain't got nothing coming and you don't choose here. This isn't Burger King. Having an attitude like that doesn't that then set up that power situation whereas if an inmate.... I would plead with you to think about what Steve has said here and think if your policies of rigidity and realize, yes, stability is very important to inmates, but if somebody comes to you and asks for a cell change, he's giving up the stability that comes with a long term placement, there must be some reason for that. It must be a cry for help.

Donahue: Absolutely, and I don't discount the request. That's not what I'm suggesting. To create a routine system of reaction and anticipation of request, I don't agree with.

Fellner: No, that's what..., yeah, he wasn't....

Donahue: But I truly believe that when an offender has a request, the request needs to be evaluated. Absolutely, on its merits, to determine the benefit for the system and for the offender. We need to accommodate those kinds of things.

Fellner: Without sort of belaboring this because I'm sure other people have questions, but if, by evaluating, you have to determine whether the cell mate is at risk. If cell E is at risk with the cell mate, then you run into the problem that Steve also identified which you're not a snitch. You've given up your cell mate and he becomes the person who comes forth being raped, becomes vulnerable.

Babbitt: If I might just add real quick, the systems that use that system that function and function well and have for years, what happens is when somebody moves out, he sends in a kite to the Captain saying 'I have no celly and I know somebody that wants to move in. Can he move in?' And they say if he sends in a kite and says he

wants to move in, we'll let you both move in and then he moves in and then when those two cell mates, they might stay together for the whole rest of their time if they get along or might stay together for three years. So it doesn't just cause people to be moving all the time, 'cause most people don't want to move, you're absolutely correct. They don't want to.

Fellner: I wasn't suggesting that they should move all the time.

Nolan: Could I ask too about classification? You know Sheriff Hennessey, and I realize the difference between jails and prison systems, but Sheriff Hennessey in San Francisco has set up at intake, a profile of potential predators and potential rapists and would look at somebody like Steve on intake and say 'We're not going to put him in a situation like that. We won't allow that. If we don't depend on Steve to come to us and tell us, we don't allow that in our institutions, and do you have a classification system which takes into account the vulnerability to rape and also, frankly, a potential proclivity on the part of someone as a predator.

Donahue: Absolutely. Classification system is there, it is routinely evaluated by staff. Not only at intake but continually throughout confinement.

Nolan: But I mean is one of the factors susceptibility to rape? Is...

Donahue: Sure, it is, sure it is... and previous history, absolutely.

Puryear: I wonder if all if, for all of our benefit 'cause you've been alluding to it, talking about unit management, things like that, if you could maybe, both Commissioner Donahue and Ms. Zanning, address the issue of direct supervision versus indirect supervision, unit management approach versus other styles of correctional

management? Why that is more likely? Why a style of unit management or direct supervision might be more likely to catch a request for a change of cells and be treated favorably? And secondarily, in the course of that answer, I heard you, Commissioner Donahue, talking about the physical structure and the limitations that imposes. But, are there ways to work around those physical limitations and to provide indirect supervision even in facilities that weren't designed for it?

Donahue: Sure, two questions, indirect questions. The concept of unit management allows for frequent interaction with the offender and staff members about daily progression or frequent progression of program participation. So it really does create the opportunity for the offender to communicate to staff indirectly, in a non-threatening environment. It allows for behavioral assessments to be made routinely. I candidly applaud unit management for that very reason, because I think it's our job as practitioners to ensure that the tools that were absent for the offender when he came or she came to the system, we create some opportunity for them to better themselves, if you will, to be successful on reintegration back into the communities. And without it, it's difficult to watch program progressions. Back to the physical plant modifications, we have a couple of, I have a maximum security prison that was built and designed with Abraham Lincoln was president. It's still a vibrant facility, still being used, very clean, orderly and secure, but doesn't promote direct lines of supervision. So with the adventation, if you will, of technology, computer systems, video systems, and controlled movement, we're able to assist, if you will, in the well being and the safety of those offenders. It still requires staff to walk and you can't sit in what I call the tower system of corrections and expect to understand how the facility is being managed. And older institutions, the wall stands on the perimeter, control pickets inside of institutions, promote that failure. Staff have to get out of the tower. Now granted, tower as a literal sense are used for security enhancement. But the facility has to be managed by walking around and so, in

addition to the... the addition of unit management, the addition of technology, you can take old institutions and make them safer and that's what we have attempted to do.

Dr. Schwartz: I might add, I've been involved in the case I dealt with in Shelby County, the typical I think of some other things in Shelby County, the jail that opened in 1981 had a lovely 1950's design and was an old, linear jail. For those in the business an Auburn style or telephone pole style design with very small linear cell blocks accommodating about 40 inmates. The only way that we could have any assurance of getting that jail under control, because it was entirely under inmate control and gang control, was to put staff inside. The staff were terrified. They believed they'd be killed, beaten, assaulted. None of the staff wanted to work there. Some of the staff had history of dealing with inmates only from the other side of the bars and had established pretty good reputations for the way they spoke and dealt with inmates. They particularly didn't want to go inside. We had to refit, retrofit that jail at great expense, and because of the size of the living units, there are now staff in the living units. They are in there, they do have to walk around, they can't, even sitting at a desk in the living unit, is not good enough, and we've been working with that as we speak in the last month in Shelby County. However, an inmate is unlikely to rape another inmate if, 40 feet down in the same living unit a staff member, even a bad staff member, is kicked back reading personal material or the sports section, reading how Notre Dame, like Stanford, got unceremoniously removed from the women's MC2A. That inmate is unlikely to do strong armed tactics or a weapons assault or a rape because there's a staff member in the living unit right then with them all the time. Now it's better if the staff member's walking around, but you can, we found it necessary, that millions of dollars expense to retrofit, the jail is running with about 1,100 uniformed staff, for 2,000 inmates. If it were a modern podular,

modular kind of jail with 70 or 80 inmates under director supervision by one staff, 550 staff could run that whole jail, half the staff uniform cost. But you need no one method. If you do that, and if you do good classification right when inmates come into the facility, so that you do sort out people who are both very predatory and people who are predictably likely to become victims and you use protective custody wisely, and you pay attention to cell changes, and you have counseling staff that are actually working the units and seeing every inmate at least every week and talking a bit with some kind of welfare check. If you put all of those things together, you've got a lot of protections against the situations that TJ talked about this morning so eloquently and Steve this afternoon. But no one of those things is going to do it. But in this business we really do know all of that now. We know to do all of that, it's just that most places don't do all of that. They put up with more violence than is needed.

Zanning: You know, there's another aspect to that too that I'd like to add and I agree with both of my colleagues. But one of the things I think that we need to do that we, that I am very cognizant of, are secluded areas. I, with rare exception is there a need for a solid door. There is absolutely no reason why a unit manager's office should have a solid door, should not have a window or should have blinds on it. There is no reason, I heard that horrible story this morning about the rapes in the broom closet, mop closet. Excuse me, why does a mop closet need a door? You know? Take it off. And I guess that was one of the things as we inherited some mental health facilities. Mental health, for whatever reason, there must be in their code that like every three foot they have to put a door and it has to be solid. I mean, they have more doors in mental health facilities than Carters has liver pills. So, you know, there are reasons to have fire doors. There's no way around that. But I think big windows, I think visibility is very, very important. Past that, there are, if you can't take a door off, but if it's not a fire door off, you can put mesh gates up. I

mean, there are a number of reasons to increase visibility. Another thing that works in our favor is key control. The majority of staff on prisoner sexual misconduct involves staff who've got the keys. I think it's a misnomer that correctional officers are the primary perpetrators, not the... It doesn't exist if it does. But I mean, it's the people that's got the keys. Why does a maintenance worker have to have every key to every part of the facility on his ring? So one of the things that we have done is restrict keys for basement areas as an example. Yes, there need to be rounds, but if that key is checked out at the control center, and security staff, custody staff know when it was checked out and then the rover also follows along behind at some point to do rounds. And if that key is gone longer than a certain period of time, that there is action about that. And likewise, we've also restricted some keys where the only person that can allow the seal to be broken and the key to be given is with the Warden's permission. So by virtue of implementing key restrictions, key control, I think that's one cost effective, doesn't cost money, very, very easy way to begin to control parts of our facilities where we know the likelihood of problems exist.

Fellner: Could I ask you a question. We've been talking about preventing or responding to rape primarily and you switched it over to staff sexual abuse. One of the concerns which I know was a concern in your facility in your system for awhile, not only was there staff sexual abuse and then there was litigation and a desire to really change that. Well one of the concerns of the women was retaliation, that if they did complain that they were being abused by staff, that they would be victimized doubly and triply and I wondered what lessons you have learned in your department's efforts to address that particular problem that you might share with us.

Zanning: Sure, be glad to. Well, I think one of the issues in terms, and Steve's alluded to it too, retaliation. Whether it be by other prisoners, whether it be by staff. So,

women prisoners within our system have the ability not only to use the grievance system, but to report what they believe might be retaliation as a result of reporting gender based misconduct. We have kite boxes at several places within the facilities and the only person that's authorized to open those is the Warden or Warden's designee, which typically is the inspector, so confidential letters are dropped in those. They can write to me. If we get an allegation of retaliation, then a committee is convened. And, it's a committee from outside the facility where the alleged retaliation complaint was made, the individual who shares that is the administrative assistant within the region. And, I work with that individual and appoint the assistant deputy wardens who will sit on the committee. And again, their staff who are being brought in from another facility to review the allegation complaint. And, I truly believe that that process is important because there is a good old boy system that exists within institutions. And, to ensure that complaints are taken seriously, evaluated objectively, I think always bringing in new sets of eyes to review that is important. So that's been, I think, a very positive and productive change that we implemented back in '99.

Chairman: Mr. Beck..., Oh, I'm sorry. Go ahead.

Kaneb: A question for really any panelist. In doing our work, it is quickly become apparent to me in particular as a non-professional in the corrections area or in the legal area, that whether or not sexual activity was consensual or coerced, is going to be a major challenge because the act in my view properly defines rape as rape that's not just a violent assault or assault with a knife at somebody's throat, but the type of assault that's the Babbitt experience, which you are all very familiar with. So one of the thoughts I have had about, gee, how can we help administrators get out of the dilemma of, well was this consensual or wasn't it or how can well intentioned administrator or guard deal with people in that same system who really aren't

interested in doing anything progressive and are more than happy to call virtually everything consensual. I did verify, but I'm just simply asking Judge Walden, isn't it true that in almost every prison in the U.S., whether it's federal, state, county, that sexual activity is not permitted. Am I right or wrong about that?

Schwartz: That's correct.

Kaneb: So, obviously, I mean, you've thought about this. You know where I'm going is... Would it be helpful if we were to focus on the prohibition of sexual activity period. In order to avoid the end run by some people and if the answer to that is yes, maybe you could give us some advice on it. I don't necessarily mean it has to be in this form in this room. We will make ways to contact us easily available to you. Advice on this subject could be helpful.

Schwartz: Let me try, and I think you may have more than one opinion on this panel. I don't know at all. I would give you, it's a good question, it's a logical question from the discussion here today, I would give you a categorical no. There is in prison, you're absolutely right, I do not know a jail or prison that doesn't prohibit sexual activity, including masturbation. So you will get written up and some facilities have a lot of problem with inmates who are flashing staff or particularly now that there's gender integration of uniformed positions, some inmates will masturbate in front of female staff just to see if they can bother the staff or because they like it or find sexual gratification. That's already dealt with to whatever level. Places that run well deal with it well; places that don't probably don't deal with it well. It will confuse and lose, I think, the focus on sexual abuse and coercion and rape, seriously lose it if the Commission's suggestion is let's tighten down the screws on sexual activity. We're really talking about very different kinds of things, and the situation that Steve has described is so different than an inmate who is under the blankets

masturbating and staff come up. And some staff in some places will walk past and some staff in some places will write the inmate up and make a big deal of it. But they are so categorically different, I think my own opinion is it will be counter-productive.

Kaneb: What if we just said interpersonal sex?

Schwartz: Well, again you run the risk that you dilute your efforts, or diffuse them...

Kaneb: Okay, that's okay. So the answer is basically the same.

Schwartz: I'm not sure everyone else has anywhere near that opinion. That's mine.

Zanning: Yes, I'd like to suggest that as we together work through this issue, that we don't take a... that we understand that just because a person goes through the gate behind the wall, they don't check for sexuality at the door. And that is an issue that we somehow need to manage. And I agree with Jeff that there is a difference between the abusive attack, rape versus, although it is not authorized, it is not approved, it's wrong based on our policies: Consensual sex. How do we deal with that? You're talking about a woman whose biological clock is running down and she wants to be a mother and she's serving 30 years. You know, there are so many intricate issues around that whole thing. And I would also suggest to you that the difference between genders, sex involving male prisoners/female staff, sex involving female prisoners/male staff is very different. And if you kind of, the overlay of society, if a male prisoner "gets over" on a female staff, then that's the good old pat on the back. Whereas, if the female prisoner and male staff engage, it's viewed very, very differently. And so the whole, the good part is we're talking about it. And hopefully can learn from each other in terms of ways to manage it,

but it is a dynamic issue, because people who are locked up for long periods of time don't lose their sexuality.

Kaneb: I'm sure that's true Ms. Zanning, but what I'm trying to understand is, is the possibility that the work of well-intentioned administrators, and are commission to, if not eliminate, reduce markedly or substantially coerced sex, that we might have to get tough or about prohibiting consensual sex simply because it helps mask what we're really trying to get at. Now that's the question I'm asking.

Fellner: And you mean inmate-on-inmate sex, not staff and...

Zanning: It is prohibited by policy.

Kaneb: Yeah, I understand that. I'm not going to take the rest of the time asking the question again. I've put the question out if anybody wants to...

Beckman: If I may. Prohibition only works if, in fact, enforcement can occur. Now if what you're saying is that anytime the institution, the internal affairs or the Indiana State Police in our county, would determine that sexual contact between two inmates occurred that it should automatically then be considered a violation. Is that what you're getting at?

Kaneb: That's one of the things I'm asking and I understand the import of the response the way you've posed it.

Beckman: I think you have to understand that there are many, many things that are illegal in the institutions. Also, quite frankly the truth in the prison that was built in Michigan City at the time-- started at the time Abraham Lincoln was president--

that is still the major maximum security prison in my state. It is also true that there are many things that are illegal in that institution, from alcohol to marijuana, to drugs that also come in. I think that if the question was, Commissioner, that if any sex occurred since it's not supposed to happen, we don't have to deal with the issue of consent versus force. It's automatically going to be a violation. It still gets us back to the exact same place, that we can only enforce that violation if I have sufficient evidence to criminally prosecute that case in a courtroom. If my victim is not going to come forward and in any way, shape or form, cooperate with the investigation or with testimony in the courtroom, then whether it was consensual versus forced becomes academic, because there is no punitive end to the conduct. There's no punishment capability. So I'm not satisfied that whether, if you just said that it's illegal, therefore any sex automatically, whether consensual or forced is wrong, therefore prosecute, I can't prosecute if I don't have an active victim that's going to assist in our testimony or prosecution. We end up back at the same place, sex happening.

Kaneb: Taking it to the level of prosecution is another matter. I was talking more of in-prison discipline. But, I've taken enough time.

Chairman: I had a couple questions. Mr. Beckman, if you have an allegation that's brought to your attention and you decide that it needs to be investigated, do you have the capacity of moving that victim or alleged victim to another facility while that investigation occurs?

Beckman: I do not directly have that capacity, however I have never turned down by the Department of Correction; former Commissioner, current Commissioner. I haven't had a lot dealings with Mr. Donahue. He's only been in his position a couple three months in our state. I have never had any difficulty in the Department of

Correction cooperating with my office when we need to move a witness or move a victim in order to maintain the integrity of our case.

(end of tape)

Chairman: Do you routinely do that?

Beckman: Yes, we do, but most of the time that is very rare that ...that is a sex case. The vast majority of the situations where that occurs is an outright murder. Some form of crime like that that is, is not a crime that cannot be not reported. We do cell counts. We end up with a dead body. We know we have a crime if, in fact, there's a knife or a shive stuck into it... a shank stuck into it. We know we have a crime. So, it's a little different than a crime that has to be reported before we even come into the knowledge of a potential violation taking place and then it affects the investigation flowing from there. But I have received nothing but total cooperation with the prisons within my county when I have asked -- as they have with us involving guards bringing drugs in, doing types of outside stings, and so on and so forth with our operations on the outside to assist with the integrity of the people that are actually working at these institutions and the items that are being brought in.

Chairman: I have one other question. You people seem to be very receptive to the appreciation that there is a problem and a willingness to do things to try and address it. That's not going to be, in my view, the experience that we're going to have with all administrators of prison systems. From your view what would be the most effective way that we can get their attention and have them take this issue seriously for those who aren't of the same mind set as you are?

Donahue: I'd like to comment on that. You know, I think... that it was Jeff that commented earlier about the majority I think, the vast majority of corrections professionals

around the country want to do the right thing. In those instances where under reporting occurs or avoidance is the issue, I think it's a matter of public recognition and accountability. The efforts by which the reporting through PREA is now established and the Commission will review those institutions or those jurisdictions that don't do well. Nobody wants to have their name on the score card unless it's a good score card. You know, whether it's a report card for academics or whether it's a report card for how many times you're at bat. So I think the accountability issue is something that you're definitely going to have as a tool. I will say this and this kind of alludes back to the question earlier but yet this environment as well. Every human being deserves to be safe. I think that is a unilateral expectation whether you're the youngest of offenders or the first time offender or the toughest of the tough guys. Everybody still wants to be safe. And as a practitioner that's our responsibility. I don't think it's a matter of whether it's consensual or whether it's not. We view all sexual activity as inappropriate in an institution. But if those opportunities where offenders have the ability to communicate to us that they have been preyed upon, we need to react to that very aggressively and professionally. And, I think humbling practitioners to the degree that if they don't see it as a responsibility, that the public should recognize that. Because I don't know of any corrections professional that I've ever met in my tenure that wouldn't welcome the ability to demonstrate that they're doing the right thing.

Kaneb: To follow to that I will just say thank you for everything you just said. But we are also sensitive to those systems, those correctional systems, that in recognizing their problem and going at solutions are going to perhaps start creating statistics that make them look like they're worse than they were before they started. And that may be happening in Texas right now. And we have figured that out and we're going to try to communicate that thought to your whole community, that we do understand

that paying attention to problems, such as problems that may have been, let's say, ignored before and...Okay, so...

Struckman-Johnson: Yes, I'd like to go back to the sex issue that John Kanube raised about, you know, what can we do about sexuality and if it's prohibited that means it's an incredible question. No masturbation is allowed?

Babbitt: I've got a comment to make on that. I consider that like the marijuana is the gateway drug. Masturbation is the gateway to rape because it's already illegal so if I'm already breaking the rule I'm going to be thrown in the hole, hell, I might as well just stick my dick in my celly's mouth rather than masturbate. Excuse the language. That's the way people think. That's what I think they think. You know what I mean so.

Struckman-Johnson: So, oh my God. So since the lower form is prohibited, why not go up to the higher?

Babbitt: Why not, you're still breaking the law...

Struckman-Johnson: Yeah.

Babbitt: You're just breaking it a little bit more. You're going to go to the hole either way, so...

Struckman-Johnson: Get more from it, yes. Okay. Alright, this is educational, I guess.

Schwartz: I actually, I would disagree with Steve on that point. I don't know that you can, I don't even know that, it's important to spend a lot of time worrying about the

degree to which you try to regulate masturbation. Flashing or trying to offend staff or get a rise out of staff or whatever, different issue. But what somebody's doing under covers or at night and not bothering anybody else, it is in every institution I know against the rules. There are picky rules against other things. There are other rules that staff know in almost every institution are broken with regularity but they're on the books and they seem to in some way suggest a more orderly running of the institution. I think that in some ways that's a distraction. I don't know that having a rule like that leads people to think, well, since I'm masturbating, that's against the rules then I would go to... I might as well go to rape. I think that's a jump. Maybe that is Steve's experience.

Babbitt: It might be a jump. I think it's a jump with the marijuana one so. Well, that could be a jump with that one, too.

Schwartz: Yeah, and the danger is... I don't know that we serve young folks well if we treat PCP and heroine exactly as we treat marijuana. That's an old heavy discussion in this country. Similarly, I would hate to see rape... and this is a point we come back t... I'd hate to see rape or staff sexual misconduct with inmates thrown in with things like masturbation. If somebody wants to deal with masturbation as an issue, that's probably a symposium I don't care to come to and speak to.

Struckman-Johnson: My question is...or... no. We're searching for opinions and ideas here. One question might be if you liberate the policy on masturbation, and have some sexual expression, I know inmate opinion is sexual liberties actually may prevent rape. My comment as a researcher is that I now have data from over 500 victims -- predominately male. And one of my questions to them in this survey -- this is written survey responses not personal discussions with them -- but I asked them what are the solutions

to prison rape? I asked everybody that, victim and non-victim. But the major answer is conjugal visits which you kind of have to think about it for awhile and in their explanations they say it's not just the idea, in part it's the idea of a promise of a "normal" sexual activity is very powerful for the inmate population, not only for sexual expression but actually the reward for good behavior and they are convinced or in their opinions they give me that if you have that opportunity, the climate would change radically because they would be looking for, and hoping for this opportunity, and good behavior would abound everywhere. That it would just kind of, the whole climate would be calmed down. Now this is their opinion. Staff responses put conjugal visits way down on the list. But I do know that there are some data that indicate that conjugal can be successfully implemented. It's not the practice strongly practiced here because it's expensive I think.

Schwartz: Expensive and staff don't like it.

Struckman-Johnson: Right.

Schwartz: It's not... It violates the attitudes of some staff and frankly some administrators who don't think that's right or that the public shouldn't be providing that for incarcerated people, but California does still use conjugal visits. It's only used in a few places in the country. It's usually restricted to a small percentage of the population. You're absolutely right. It is a huge incentive to stay out of trouble but as far as... So, yes, for those, conjugal visits is expensive, it's somewhat controversial with staff. Most correctional staff don't like it. It is an aid to institutional management because inmates who otherwise might be willing to get into trouble, typically you have to be write-up or infraction free for, Dave, I don't

know, 90 days to 180 days, anyway. You have to have a long clean record of no infractions and inmates desperately want the conjugal visit. How much sexual relief does it provide and for how long? I'm not a physiologist. It's beyond my expertise. The fact that institutions do prohibit masturbation doesn't mean it doesn't go on. Rape goes on in spite of the fact that inmates can and do masturbate all over the country in institutions.

Fellner: Could we have, I'd love to hear Ms. Stein and Mr. Donahue talk about conjugal visits. Not only conjugal visits but visits with family or getting to spend time with family. I know New York has had for awhile. You know, it's the idea not just of a normal, somewhat normalized sexual life but it's reaffirming the inmate's connection to the community: where he's been, where she's been, where she's going back. And I wonder... and as we've discussed also, prison rape... High incidences of prison rape tend to be, we believe, correlated to kind of dysfunctional facilities and high instances of violence and misbehavior of all kinds. So I'm wondering what, in your experience, providing more access – whether it be to family... for intimate relations or just hanging out with your kids in a private space or having sex with your wife or your husband or girlfriend or boyfriend or a hired prostitute for that matter -- does that help create a better environment within your facility and what's your experience with this?

Donahue: Nancy, I'll address that if I may. I've worked in systems where furlough programs were used: Pretty aggressively. It's a temporary leave from a correction environment to go home and to visit with family for a variety of reasons: everything from medical trauma that occurs because of an accident and a family member's in a hospital or a funeral environment or social activities. And they are very popular with the offending population. They're great management tools. There is very little cost to the taxpayer. But, you know, there's a potential risk associated with

that temporary leave, and there have been those occasions when offenders were released and the inevitable headline occurs, and then systems react to that. But furlough programming... I'm more inclined to embrace than I would conjugal visits. The visitation programs that are inside of institutions, a lot of our facilities have very passionately embraced family visitation environments. Parent to children space, devoted play centers, and to very vibrant opportunities where kids are brought into institutions and there's that one-on-one interaction for the mom or the dad offender to interact on a routine basis and it's a fabulous program. By and large again, is a great motivational tool for inmates to maintain appropriate behavior. There is a portion of the population that won't qualify for either of those programs or conjugal visits because they don't have social support systems from the community. They are absent family. They are absent significant others. There is no history, if you will, of that relationship and, as a result, that's a population that is very difficult to serve because you can't create artificial stimulation, for lack of better terms. Some of those suggestions would be a little difficult to debate publicly I suspect, but I can't create that connection for those offenders. So we have to environmentally support those offenders' well-beings without connection to the communities.

Fellner: Do you have a furlough program in Indiana?

Donahue: We do have a furlough program, not a social furlough program. I have the abilities as Commissioner to allow for offenders to be released under temporary environments for certain conditions and those are evaluated on an as-needed basis.

Chairman: We could probably go on for another two hours, but we don't have that luxury and we had indicated we wanted to give the audience the opportunity to ask any questions. We only have about 10 minutes left. Are there any questions from the

audience? If so, could you come up to one of the microphones and ask your question?

Thomas: Can I just address Mr. Beckman for just a second?

Chairman: Okay, I wanted to get some input from, maybe you could talk to him privately?

Thomas: Okay.

Stemple: Hi there. My name is Laura Stemple and I'm the Director of Stop Prisoner Rape. And I just wanted to underscore the issue of the lack of comfort that a lot of inmates feel with reporting abuse to begin with. So the majority of survivors of rape that we work with have not reported the abuse to officials while they are inside. And I think this ties in to what Commissioner Kaneb ... his important question. It ties in because, if we do start cracking down on all forms of consensual sex, that will make it even more likely, I would argue, that someone in Steve's situation would be willing to report if they know that they're going to be punished because they were somehow participating ... if in fact it is found to not be an extraordinarily abusive situation, which is what Steve experienced. But there are, in fact, gray cases as well. And I wanted to touch on that and to really emphasize that I don't think we should get too overwhelmed by the difficulty of determining abuse when there is a lack of violence or physical force. It's a challenge, I acknowledge, but it is possible to know when you talk to the victims themselves. They are usually quite clear on the fact that they are being exploited or that they are hooking up only as a means of survival. I then wanted to just turn my comment also into a question for Steve. And I'm wondering, Steve, if you could just comment on whether or not you think that the officials in your facility knew about what was happening to you? You mentioned changing your name from Steve to Stephanie and other things that

seemed to be pretty overt. And I'm just ... I just don't want us get too carried away with, oh how would we possibly be able to determine whether this is abuse versus consent. And I'm hoping you can shed some light based on your experience.

Babbitt: Yeah, most certainly. And most situations ... I mean if I'm walking around the compound wearing, you know, women's clothes that we made by hand out of t-shirts and stuff to make like little skirts and stuff and got Kool-Aid on our eyes and stuff like that to make it look like eyeshadow ... I mean they know that you've been turned out, but ... In some cases they probably just think maybe you were already that way when you came in or in some cases, they certainly know that people get turned out because they see them come in and then they see them change. I had one case when this was in one institution in Ohio when, before I actually got turned out ... when I was assaulted and I was thinking about telling, because I didn't really know what to do. And I was kind of walking around in a daze kind of like, you know, I guess they call it the acute phase of rape-trauma syndrome or whatever right after you get raped. And I remember I was kind of like walking around the hall by the Captain's office, and one of the Captains said, 'What's the matter with you boy? What are walking around in a daze for?' And I think one of the other ones or maybe it was the same one, said, 'What are you, a cum drunk?' like that. Excuse the language, once again, but that's pretty much what they said. In other words, they knew that I had been assaulted and they're just like, you know, get back to your cell, you know; don't be just walking around up here. You know, that was kind of their attitude and stuff like that pretty much goes on, you know. So it's like, I don't know. It's kind of a gray area sometimes but certainly sometimes they know things are going on-- but unless you just come straight out and say it, and they would rather that you didn't most of the time -- it's just not something they want to deal with. You know, so ...

Chairman: Any other questions from the audience?

Alexander: Hi. I'm Elizabeth Alexander from the National Prison Project. A few months ago, as we were monitoring a website that serves correctional officers in a particular state, we noticed that allegedly a correctional officer had posted on the website a parody of the Night Before Christmas of which the subject was a particular officer who, in the spirit of the Christmas season, had delivered to a particularly predatory prisoner another prisoner to be his sexual object as a Christmas gift. After that was posted, a number of allegedly correctional officers wrote to the site saying that was really funny; I really enjoyed that. And a couple of correctional officers -- and at least one of whom was identified herself as female -- wrote to say this was awful and, even if we don't like prisoners, everyone is a human being and has to be treated with dignity. Whereupon, a very large number of correctional officers wrote to the people who had been unhappy about this posting and said, "Can't you take a joke?" and "You must be an inmate lover," in a rather more colorful term, "if you would even think that anything that happened to a prisoner could be less than what he deserved." What sorts of things do you think -- and this is really addressed to the correctional administrators ... What are the sorts of things that you would think about doing if you were the person who was responsible for insuring that your staff had the appropriate professional attitude in going about their work, given that this is an anonymous site, and there is really no way to be completely certain that it actually was staff or in particular to identify the particular staff?

Donahue: Well, you know, I guess I would allude to this in two responses. First and foremost, that type of behavior is totally unacceptable, and there is no tolerance for that in our system. One of the things that I did, after I arrived as Commissioner, is create portals by which staff could communicate to me directly their opinions about suggestions -- we call it Ideas For Change -- but it's also a media by which staff can

identify inappropriate staff performance, because sometimes we are gauged by our peers but also we are measured by our peers. So, corrections professionals ... Out of 9,400 employees in this state, am I sitting here today to tell you that all 9,400 are superstars? I think I would be a little naive if I suggested that, but it's my job, as Commissioner, to insure that professional demeanor is the expectation. We'll gauge that expectation with monitoring, and those staff that demonstrate that they are not professionals and have disregard for process and policy procedure, and protocol will no longer be engaged as employees of this organization. If they violate something criminally, we will hold them accountable with prosecution. And that's an expectation that I have as a human being. And so, and I believe, categorically, the majority of the corrections professionals in the country support that type of process.

Chairman: I think there was one other question. I know, Bob, you had a question, but we've got a bus that has to get to Chicago -- so some of us can get home tonight -- because I have a calendar in court tomorrow. But we do want to take your questions. This will have to be the last question.

Gomez: Alright. My name is Greg Gomez. I'm with the law school. I'm also a former employee of the Federal Bureau of Prisons, as well as California Department of Corrections. My question relates to the use of racial classifications in assigning inmates between institutions, as well as when they are processed through a reception center. Now the California Department of Corrections relied on an overt classification system, which was recently looked at by the Supreme Court and not very well. My question is: as far as ... Prison rapes are often racially motivated. What impact, if any, would a racial classification system have on preventing prison rape?

Schwartz: In my opinion, it will lead to more violence, and rape will be among the violent incidents, because you will end up handing control of the institutions to racial groups or racial gangs.

Garnett: I guess, I'm confused by the terminology "racial classification system" because that's not something...

Gomez: Well, It's fairly ... It was pretty unique to California. Basically, how it would work is an inmate, upon processing, at least officially anyway, would associate himself with a certain group. So, if, for instance ... The leader of the Mexican Mafia was a Serbian guy but yet he associated himself with the Mexican Mafia. It's just the way it worked over there. So, in this regard, I was just wondering if, by allowing a racial classification system, would that allow... would that prevent any sort of like power or anything like that ... any sort of power domination type of thing between racial groups which seemed to be a part of prison rape. If that makes any sense.

Zanning: You use the word "Mexican Mafia." See, I instantly think security threat group, Okay?

Gomez: Okay.

Zanning: And I know that there was an article published in the fall of last year in the *Journal of Gang Research*, and that article tells us, based on the research that was done, that one-third of all violence in prison is gang related. So, I certainly could not support classifying someone based on a gang relationship. Our classification system evaluates other objective factors in terms of crime, length of sentence, behavior, things like that, and I (Inaudible) classification.

Chairman: I mean, is the question if we segregate people...

Gomez: Yes.

Chairman: ...whether that would....?

Gomez: Exactly.

Chairman: ... impact on the incidence of prison rape?

Gomez: That's basically my question.

(She is inaudible)

Kaneb: I think the question is segregation by racial or ethnic group, would that help?
That's what you're asking.

Gomez: Yeah, precisely.

Kaneb: That's the question.

Beckman: I'm not an expert in prisons but, since I've been sitting up here up all day, I might as well say what I think. Separate but equal is inherently not equal. Now, I don't care how you cut it, I cannot believe that segregating people by ethnic group or racial or religion is going to have much, if anything, to do with rape or forcible rape within a prison. I don't think that we actually, and again I'm not like Mr. Babbitt here; he would be able to articulate much better than I what happens inside the walls. I've been in many times but never had to spend a single night there. I fail to see how, if in fact, the motivation is either as a result of anger or violence or pure

sexual gratification ... to think that a Caucasian won't go after a Caucasian or Hispanic won't go after an Hispanic or an African American wouldn't go after an African American. I can't see that how that would make a difference at all. Only my opinion.

Babbitt: I think in some cases typically white males are – especially small males -- are more subject to being raped by bigger black men. That's just in some institutions. I've read that several times and that's been my experience. And I don't mean that to be anything against black men or anything like that. I just think sometimes it just seems to go that way for some reason. And I think black people tend to stick together better, which I admire, and look out for each other ... one and another ... for each other better. And whites tend to not because, as a general rule, when they grew up they didn't have to as much, you know what I'm saying? So I do think there is a component where sometimes small white males are more inclined to be raped by black men. So, if it was a matter of them being in the same cell, it might be an issue, but I wouldn't say have them in two completely different prisons or anything like that, because I had lots of black friends in there and I do out here.

Gomez: No, this was specific to each cell.

Babbitt: Yeah, in a cell. I would be more scared, I would be more concerned if I went in and there was a black guy in there. Although I've had white guys do it too, but I'm just saying that's just me personally.

Struckman-Johnson: What do you think?

Gomez: Um.

Babbitt: Some of that, some of that is probably just stigma too that comes down because they used to perpetuate that type of thing and so if a person thinks it...

Gomez: Exactly.

Babbitt: ... it might not be true.

Gomez: Exactly.

Babbitt: It might just be my perception that makes me more scared and therefore I'm more susceptible based on something that might not even be true.

Unknown Female: Seem to be a burning question, and we'll indulge one more.

It's not even a question; it's just a comment. Thank you for starting this dialogue. I spent many years working on behalf of sexual assault survivors -- both male and female. And I just wanted to say I think it's really important that we emphasize the discussion about rape. I think that there is a lot of work to be done in society, in general, on rape. And the way the discussion was going today, I see a lot of parallels between the difficulties of establishing what is rape, what isn't rape in the prison system in the same way as we do in society. And I just encourage the Commission and everybody as we move forward to really focus on what the issue is, and it's rape and it's not sex. It's an issue of power. It's an issue of domination. And I just encourage you to focus on that because I think that's what the issue is. Thanks.