

INTRODUCTION OF SENATOR SESSIONS BY THE
CHAIRMAN AND REMARKS BY SENATOR JEFF
SESSIONS, INSPECTOR GENERAL, (R. Ala.)

THE CHAIRMAN: We're happy to have you
with us here today.

SENATOR SESSIONS: Thank you, Mr.
Chairman.

THE CHAIRMAN: It's been a long time
since I've seen you. I did a few things with you
down in Alabama when you were the U.S. attorney.

SENATOR SESSIONS: That is correct.

THE CHAIRMAN: It's a pleasure to have
you here. I know that you were a tough hard-nosed

prosecutor, but I also know that you have very strong feelings about human rights and feelings that individuals who are incarcerated should be treated humanely when they are in jail. And I'm, again, not surprised that you would be a sponsor of this legislation, so we do thank you for your presence and welcome any comments you would like to make.

SENATOR SESSIONS: Thank you,
Mr. Chairman.

It is true that I prosecuted almost 16, maybe more than 16 years, I think, the biggest part of my professional career, and during that time many individuals came before me that went to prison, some for very long periods of time. And I think all of us who are sensitive to liberty in America know when you deny someone their liberty, you remove them from their friends and community and incarcerate them, then there's certain responsibilities that go with that. They need to be provided food and housing and a decent environment in which to live and they absolutely

should not be subjected to assault, personal, sexual or other kinds of abuse that has been so much discussed today.

I believe that when you deprive someone of their liberty that there's certain responsibilities go with that. And just to repeat, certainly at a bare minimum we should not allow those people to be abused. We cannot justify that under any shape, form or fashion.

I believe in the criminal justice system. I know some think that maybe there are too many people in jail and probably if we reached the highest possible level of analysis and sentencing procedure, many do serve, perhaps, longer than they should or should not be in jail and others maybe should be in jail. But I also am confident that a lot of people are alive today and the crime rate has dropped significantly in recent decades as a result of a more careful identification of repeat offenders, certain sentences that are longer. It has been a factor in breaking the back of crime that protects the lives and the safety of millions

of American citizens business. So this is tough business, Mr. Chairman, as you know and members of the panel know, when you have the responsibility of protecting the people.

Now of those that go to jail, we can be confident that certain numbers of them have more behavioral dysfunction than others. So the group of prisoners, the people who are in prison, have behavioral problems to a larger degree than those on the outside. And it's easy for us then to see that many of those will be people that would abuse, assault sexually, rape or otherwise attack people in prison when they may have the opportunity to do. And I think it's part of the responsibility of any humane prison system to try to stop that and to protect them.

And that's why I felt good in working with Senator Kennedy and others to make this legislation a reality. He and I talked about it. We both agree that there was a general belief and some facts that indicate that abuse goes on at a rate that is unacceptable in our prisons today. There's

lot of dispute about it.

As I told Senator Kennedy at the beginning, I'm not sure and I hope and pray that 10 percent of the people in prison are not assaulted, but that figure is out there and I'm not sure that it has ever been disputed. I hope it's far less than that, but if it is 5 percent or if it is 2 percent and it can be prevented, it should be prevented. So I think this commission's first responsibility and what I envision for it would be to have an honest evaluation of just how serious this problem is, to get the best data that's possible, to examine systems and prison systems where the assaults are at a minimum, to find out what they do to make sure this does not happen, and to identify systems where the assaults are higher and need to be set aside and identified and remedial programs be undertaken. I think you can do that as a commission. I believe it's an opportunity to find that out.

As a person who has spent the better part of my professional life in law enforcement, and I

would watch, as we all have, shows on television and movies that just treat prison as a place where sexual assaults occur as a natural course of things. It is just an automatic thing, that that's part of the punishment you receive when you go to jail, is an expectation that you might be sexually assaulted. I don't believe that is so bad in our prison, but I know there's a problem in our prison.

I believe that we could improve that condition. I believe we could reduce the numbers of assaults. I know certain prisons have done so and I believe we can do so here. Focus needs to be on a lot of things. Our guards and detention personnel personally have to be of the highest caliber. Some of these assaults we know have occurred from professional personnel managing the prison. So we need to be sure that those who are identified in that fashion are not rehired in some other prison where they can continue to abuse.

We know that a number of the people that are in prison are sexually dysfunctional who have aggressive sexual tactics and that they've used

against others and they need to be identified early. And there's a pattern for most of the people who are involved in these kinds of activities. They've normally done it before and there may be well something in their prison record when they go into prison that would identify them as a predator who could be more dangerous than another prisoner. And it seems to me that would be a basic factor in evaluation of the prison assignments and what kind of supervision a prisoner might have.

Mr. Chairman and members of the commission, I think this is an important committee. It is not just something we did for the fun of it. Again, I believe as one who believes in the American criminal justice system that we do not need to allow large numbers of the American people to believe that it is a routine thing that if someone goes to jail, their loved one is sent to jail and they're going to be sexual abused as is so common in the media today.

But the public and most of us in congress

really don't know what the extent of the problem is. So I am delighted you've undertaken to serve on the commission to identify the data that is valid as a scientist that you can rely on and that you can utilize that to inform us just how severe this problem is and make recommendations that would help us reduce those attacks to an absolute minimum.

And now I would just finally say that I know there's been some difficulty in getting the commission up and running. And I'm one that believes, generally, that prompt, effective, intensive action may be better than dragging things out, but I do know that you have some reports and information that could be very helpful to you in evaluating this. And I would just say that I personally would not have any objection to extending your report date if you think that's necessary. I believe Senator Kennedy shares that view.

So those are my thoughts, Mr. Chairman. And I thank you again for your service.

THE CHAIRMAN: Thank you, Senator. We will move aggressively to submit our recommendation and report. I was happy to hear Senator Kennedy say he would welcome at least interim reports because I think there are some ideas that we probably have that we would like to see implemented quickly and not wait for another year or two before that happens.

One of those, I think, is the issue of the severity of punishment imposed on prison staff in the federal system that perpetrate sexual assault on inmates. And this is something that should be addressed, in my view, as quickly as possible.

So I do thank you for being here. I think it's very important that somebody of your stature and somebody with your background has been a champion on this issue because a lot of people will receive this effort as an effort to be lenient on the criminal behavior and I think it is important to dispel that belief. I think you, as the head champion of this type of legislation, projects that, so thank you.

SENATOR SESSIONS: Thank you. I would just say one of the things that I hope you will evaluate is to what extent a prisoner who assaults another prisoner should be criminally prosecuted. Most prosecutors don't want to fool with it. They don't want to hear about it.

I've had cases where I'm faced with the dilemma of prisoners doing a fraud scheme from prison and, you know, they ask you do you want to prosecute? They're already serving 15 years and you have to bring them into court and they have to be guarded and all of these things that go into prosecuting a case. Many times prosecutors decide it's not worth the effort. I'm not sure that's sound. I'm not sure that a person who is subject to an assault isn't entitled to the have that person prosecuted, whether he's in jail or not in jail. So it's a matter, I would suggest, you evaluate and also guards who may have patterns of misbehavior. That ought be maintained somewhere in their records because when you're in a position of power over someone, some people have a tendency to

abuse that power. It is just a weakness that they have and maybe they shouldn't be in that position ever again if they've abused it. So those are some thoughts that I share.

THE CHAIRMAN: Anybody?

COMMISSIONER SMITH: Senator Sessions, you've indicated that two of your concerns is, one, the prosecution of inmates committing offenses like sexual assault in institutional settings and I think you've identified very correctly that there's a reluctance of prosecutors to prosecute those cases. And I know there's going to be a lot of work on that. One of the issues that you talked about was also some sort of record of staff who have been involved in assaults.

As you know, one of the tools that we use is registry for sex offenders. Would you favor a registry of that kind for staff who have been involved in sexual assaults against offenders?

THE WITNESS: I think we do that for school teachers and other people who are placed in positions of authority over those under them where

they have a potential to abuse that authority, so I would think so. Certainly, it may even be it should be a routine thing that a prison, before hiring someone, may check the sexual registry for being, you know, done throughout the country today because you can never be sure.

COMMISSIONER FELLNER: Just to follow up on that question, later this morning we'll be hearing from the Inspector General of the Department of Justice, who did a report, as I'm sure you know, on sexual abuse by federal staff in the Bureau of Prisons. And one of the things pointed out in that report is that the federal law does not treat staff sexual abuse, does not impose particularly serious penalties for it, it's often just a misdemeanor, and that there's also a reluctance similar to what you expressed a moment ago to prosecute staff who engage in this.

It's not just an administrative sanction question, but it should be considered a crime and should be prosecuted as such.

Do you have any thoughts about the criminal

prosecution and the criminal laws that should tend or cover staff sexual abuse?

SENATOR SESSIONS: I do. They're two different questions. One is on prisoner on prisoner assaults and the other one would be staff on prisoners.

COMMISSIONER FELLNER: I wanted to just talk about staff.

SENATOR SESSIONS: And on the question of staff, I think an even stronger compelling reason to prosecute those cases, if anything, than the others, and would -- because if there's not a record there, often another prison may not know that this person was charged. Sometimes they allow people to resign. And I will admit the cases are not always easy because the prisoners could have a grudge, they could have people whose records indicate that they aren't trustworthy. They could be misrepresenting the facts. But usually with a good investigation, the truth will come out. And I would encourage the prosecution and federal cases federal prison.

My feeling about that as a United States attorney is different than a number of United States attorneys. They seem to often take the view that if it is not is a big crime, it ought not be tried in my court. If they didn't embezzle \$50 million, I'm not interested in \$10 million. I'm not interested in a small sexual abuse case. But if it is a federal prison and it is a federal employee abusing a federal prisoner, I think you have an obligation to prosecute just like the local DA does on a teacher or someone else who abuses a child. So I do think that it would be good to raise the level of importance of prosecuting these cases to some United States attorneys who probably have too high opinion of what a good case is.

And, frankly, the prison system, they don't -- let me tell you how it works. I've been there. The investigators within the departments and agencies sometimes just want to see the person go away. And if they have a trial, it's embarrassing to the prison to hear in the newspaper there's a report that this guard has abused prisoners and it

looks like they're incompetent and they're embarrassed and sometimes they don't bring the case to the prosecutors because they know it would result in a net embarrassment to the prison.

I've seen that in many agencies and I think that psychosis would be true with prisons. So, I think an effort to encourage cases to be investigated by the prison authorities and then referred to the proper agency for prosecution usually in the federal court is what should happen when there's an abuse, a federal prison by a federal employee in a federal prison.

THE CHAIRMAN: Thank you, Senator. I know you've committed to give us 15 minutes. We're very gracious for that. We've taken 20 minutes of your time. I know you're very busy today, so we do thank you for stopping by and your presence elevates the importance of the issue that the committee is confronting. Thank you.

SENATOR SESSIONS: Thank you. And I also am pleased that you have Mr. Fine here. He's a very fine lawyer and investigator and will give a

report of great interest. Thank you.

THE CHAIRMAN: Thank you.

Mr. Fine. We now have a presentation by Glenn Fine, who is the Inspector General of the United States Department of Justice who recently released a report, as was just indicated previously, addressing the problem of prison staff on inmate sexual assault in the federal system. And I think the findings are shocking because the federal system is supposed to be and I believe is the goal star to what the prison system is supposed to be about. And I think if we have the level of problem that we have in the federal system, I think it reflects on the problem that we probably have at the state and local systems, so thank you very much for your presence.

Thank you. I didn't do the senator thing. I guess I have to place you under oath. Okay.

(Senator fine sworn)