

1 and make a statement?

2 As you know, we are investigating, looking at
3 the problem of prison rape both at the federal,
4 state and local level. And I know as a long-term
5 civil rights advocate that you would have a
6 profound concern about this issue also. So, if
7 you'd like to make a statement, we'd be happy to
8 hear from you.

9 CONGRESSMAN CONYERS: Thank you,
10 Mr. Chairman.

11 I've asked the apologies of the witnesses that
12 are in front of you to proceed for just a few
13 moments. I first of all just wanted to welcome you
14 all to the Federal Court for the Eastern District
15 of Michigan. The irony of a member of Congress
16 being able to have his office here is an honor that
17 I have always valued very much. And as a result of
18 the riots that burned down my building, I was
19 allowed to come here. And then I was allowed to
20 stay up until now and it's on the condition of good
21 behavior. And I think so far it's working out very
22 fine.

1 Judge Walton and distinguished members, I'm so
2 happy to be here with you. This is a subject as
3 the senior member on the House Judiciary Committee
4 that has disturbed us for quite a long time. As a
5 matter of fact, only approximately two weeks ago I
6 was talking with Congressman Dan Lungon of
7 California, the former Attorney General of that
8 state and also a member of Congress, before he
9 became Attorney General about this whole definitely
10 embarrassing social subject of prison rape. It's a
11 problem that has been disturbing us for quite a
12 while. We know there's a lot of work to be done.
13 But, the fact of the matter is that we made a great
14 deal of progress. We finally now have a piece of
15 legislation that came out of the Judiciary
16 Committee, Bobby Scott and Frank Wolf, a gentleman
17 from Virginia, were the original sponsors. I was
18 happy to participate on it. It became law in the
19 108th Congress and it required, of course, that
20 statistics be kept on this subject, which hadn't
21 been really clearly done too much before then, and
22 that we also allocate sums of money up to

1 \$40 million to states to work on this problem.

2 It's not just the federal problem as you know,
3 it's a state problem as well. And, of course,
4 what's been happening is that many diseases have
5 been spread from those coming back from a prison
6 experience that has made this very difficult,
7 indeed. And so for you to have your fifth hearing
8 in Detroit in the federal courthouse is something
9 that we are very privileged to host and help you
10 enjoy.

11 We have a great number of well-known judges
12 here, as you know, leading off with Damon Keith,
13 who my brother was his law partner for many years.
14 And he's legion, but there are many other newer
15 judges less well-known, perhaps, but are doing very
16 dedicated work here in that building.

17 The University of Michigan affirmative action
18 cases were heard right in this courthouse. And so
19 I welcome your work. I had two counsels in the
20 Judiciary Committee working on this to gather the
21 fruits of your labor, of your work, of where we can
22 go and how we can continue to help. We're also

1 working with the Commission on safety and abuse in
2 America's prisons with whom I know you're equally
3 familiar, who have done work that we think is
4 compatible with yours. And they have a number of
5 people that most of you would recognize instantly
6 when I mention their names, William Sessions,
7 former head of the FBI; Nicholas Katsinbokin (ph.),
8 X-Attorney General; Mark Morial (ph.), the head of
9 the Urban League; Pat Nolan of the Prison
10 Fellowship's Ministry, and many others. They're
11 doing a great work that I think compares and
12 compliments what you're doing in terms of
13 eliminating or reducing the violence in prisons, in
14 reducing crowding, promoting productivity and
15 rehabilitation.

16 We also just passed another piece of
17 legislation dealing with the whole question of how
18 to more constructively engage members that are in
19 prison for when they return. And as we all know,
20 most of them, in fact, do return. And there are
21 many other things which we can work on together.

22 I am very anxious to keep in touch with you

1 and I would, again, compliment you on behalf of the
2 entire House of Representatives' Judiciary
3 Committee, which was very supportive of the law
4 that was passed in the 108th Congress that will
5 help you in the course of the great
6 responsibilities that this Commission has.

7 If there are any instructions or matters that
8 should be brought to my attention, I would be happy
9 to receive them now just to demonstrate that this
10 is not just a pop in meeting. This is something
11 that is very important in the cause of getting a
12 more fair criminal justice system in America. And
13 I thank you for this opportunity.

14 THE CHAIRMAN: Well, thank you for your
15 presence and your comments. The only thing I would
16 say, we did send a letter to members of Congress.
17 I don't know if you've seen it, but we did not and
18 cannot take a position on the legislation that we
19 discussed regarding the gang situation, but we did
20 express our concerns that if that legislation is
21 enacted that it be mindful that if it were to
22 address juveniles being brought into the federal

1 system that that would create a special concern in
2 reference to those young people being placed in
3 adult facilities because, obviously, they could be
4 a significant risk for sexual abuse.

5 So, while we don't express a view as to
6 whether that legislation should be enacted or not,
7 if it is we would hope that Congress would take
8 special concern to make sure that those youth would
9 not be placed in vulnerable situations.

10 CONGRESSMAN CONYERS: Thank you, Judge
11 Walton. I hear you loud and clear.

12 THE CHAIRMAN: Anyone else?

13 COMMISSIONER SMITH: I actually have
14 something.

15 Congress Conyers, again thank you. And I also
16 wanted to let you know that I remembered that in
17 1998 that you actually introduced a piece of
18 legislation on this issue. It was called "The
19 Custodial Sexual Abuse Act of 1998" and would have
20 established a registry for staff who were involved
21 in sexual misconduct with offenders.

22 One of the things that we have been hearing a

1 great deal about is the problem of these complaints
2 of sexual violence actually coming up through the
3 system and, frankly, the grievance procedures that
4 are in place in institutional settings may not be
5 as effective as they could be. We certainly have
6 also received information, I believe it was from
7 Senator Sessions, about some interest in looking at
8 creating some sort of flexibility in the Prison
9 Litigation Reform Act with regard to exhaustion of
10 administrative remedies specifically for these
11 types of incidents. That certainly is in a
12 position that the Commission has taken, but it
13 would be certainly something that I think would be
14 worth looking at and a position that actually, at
15 least one state, West Virginia, has taken.

16 CONGRESSMAN CONYERS: Thank you,
17 Commissioner Smith. You reminded me of something
18 that I should have brought up because that's an
19 important area and I look forward to continuing to
20 work with you on it.

21 THE CHAIRMAN: Anyone else?

22 (No response.)

1 THE CHAIRMAN: Well, thank you very and
2 it's good seeing you again.

3 CONGRESSMAN CONYERS: Thank you. It's a
4 pleasure. And we'll be in recess until after Labor
5 Day, but I'm hoping that your busy schedule will be
6 able to accompany a visit from me to you.

7 THE CHAIRMAN: And would always do that.

8 CONGRESSMAN CONYERS: I thank you again
9 for coming to Detroit for your fifth hearing.

10 THE CHAIRMAN: Thank you.

11 CONGRESSMAN CONYERS: How many more are
12 there?

13 THE CHAIRMAN: We have at least two more
14 hearings scheduled, although I'm sure there will be
15 more than that. Thank you.

16 I think we have Mr. Moriarty here. I heard
17 you had some problems with your flight.

18 MR. MORIARTY: Just a weather situation.

19 THE CHAIRMAN: Okay. Well, we're glad
20 you're here.

21 (Panel member sworn.)

22 THE CHAIRMAN: Thank you. You may make

1 your statement.

2 MR. MORIARTY: The Texas Department of
3 Criminal Justice is who I'm employed by. I'm at
4 the office of the Inspector General. It is an
5 independent investigative oversight entity that
6 reports to the board of Criminal Justice. The
7 board is comprised of nine persons appointed by the
8 governor of Texas to oversee prison operations. My
9 office does not report to the prison
10 administration. All of the crimes that occur
11 within the Texas Department of Criminal Justice are
12 investigated by the OIG. The majority of these
13 crimes that occur within the prison system are
14 typically homicides, sexual assault, aggravated
15 assault, weapons cases, drug offenses, bribery,
16 theft, and civil rights violations.

17 The OIG investigates TDCJ officials, inmates
18 and civilians who commit crimes while on property
19 owned, operated or controlled by the TDCJ.

20 The OIG staff consist of 100 commission state
21 police criminal investigators and 30 administrative
22 staff that are stationed at or near the 105 prison