



RICHARD L. SMOTHERMON

DISTRICT ATTORNEY, DISTRICT 23
STATE OF OKLAHOMA

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Reginald Wilkinson, Chair
Review Panel on Prison Rape
United States Department of Justice
810 NW 7th Street
Washington, D.C. 20531

Dear Mr. Wilkinson,

Good morning and thank you for this opportunity to address the panel. I am Richard L. Smothermon, the District Attorney for the 23rd Judicial District of Oklahoma. My district covers a multi-county area and contains the Mabel Bassett Correctional Center (MBCC), a medium/maximum security facility and one of only two facilities within the State of Oklahoma for female offenders. There are several limitations that confront the Department of Corrections with regards to sexual assault cases and I'd like to briefly outline those matters as well as share with you how my office has offered to assist in those areas.

Reducing the level of Sexual Assaults

One of the most effective ways of reducing the level of sexual assaults at MBCC is to hold offenders accountable for their actions. This accountability includes being prosecuted and facing criminal sanctions for their crimes. Sexual assaults are difficult to prosecute as the burden placed on victims can dissuade them from providing assistance and continuing cooperation in the matter. Additionally, sexual assault cases when compared with other criminal cases require significantly more resources during the investigation and evidence collection process than most other crimes.

When a sexual assault occurs at MBCC, the matter is investigated by the Department of Corrections. The investigators are not based at MBCC, but are

assigned to regional offices throughout the state. As a result, investigators often do not arrive on scene until at least twenty-four (24) hours after the assault. The prompt collection and preservation of evidence is critical in all cases. Though the staff at MBCC seeks to collect and preserve evidence, without proper training, critical items can be missed, evidence is not collected properly, and crime scenes can be contaminated. This is not done with any malicious intent, but stems from the fact that the initial responders at MBCC are not investigators. Just as the collection of physical evidence is critical, so is the collection of statements and interviews with witnesses. As time passes, witnesses' recollection of events can be shaped by contact with other parties. Delays of only a few days can result in witnesses recanting statements based upon contacts with other inmates.

In light of the importance of these matters and the limitations of the Department of Corrections, I have offered the assistance of the District Attorney's Violent Crime Task Force. These are highly trained law enforcement officers, located within the 23rd Judicial District and are available twenty-four (24) hours a day to assist the Department of Corrections with evidence collection and investigation as needed. Additionally, my office has a prosecutor and an investigator specifically assigned to handle violent crimes against women. The current warden of MBCC has been provided with phone numbers for these individuals that allow them to be reached twenty-four (24) hours a day to provide guidance and assistance in the investigation of sexual assaults.

It is a very difficult process for an individual who has been sexually assaulted to come forward and disclose that fact. When the perpetrator is an employee of the Department of Corrections, it makes it more difficult for the victim to disclose and discuss this assault within the confines of that institution to an investigator that shares the same employer as the perpetrator. Additionally, our office has been confronted with situations in which the department of corrections investigator assigned to investigate the sexual assault has previously investigated the victim as a suspect in other matters at MBCC. I am not seeking in any way to disparage the integrity of the investigators for the Department of Corrections, but in the mind of a traumatized victim these issues can make it difficult for them to feel comfortable disclosing all of the information that is needed for the successful investigation of the case.

My district houses a facility with sexual assault nurse examiners on call twenty-four (24) hours a day, and I have made this facility available for MBCC. Utilization of this center by the Department of Corrections provides the victim with the earliest available opportunity to speak with an individual that is trained and practiced in assisting victims of traumatic events. It also allows the victim to receive medical attention outside of the MBCC, and permits the collection of physical evidence from the body of the victim by someone specifically trained in this area.

Previous administration issues at MBCC

The last conviction of a guard for sexually assaulting an inmate at MBCC was complicated by the fact that the victim recanted both orally and in writing several times to department of corrections investigators, as well as to our office, and she attempted suicide on the night prior to the first trial setting. These recantations were not because the victim had falsified her sexual assault, but because of the environment that she faced within MBCC. After coming forward she was branded a snitch by other inmates and faced verbal harassment and physical assaults. Additionally, she faced harassment by other guards employed by MBCC.

Our office has also had issues in the past with the way victims were treated by department of corrections investigators. Rather than speaking with or interviewing the sexual assault victim as a victim, the tone was one of an interrogation. The sexual assault victims were yelled at, accused of falsifying accusations, told that they were lying and threatened with repercussions.

These events not only make it difficult for individual victims to assist in the prosecution of their case, but also have a chilling effect on other victims, which may have prevented them from disclosing their sexual assaults.

In another matter, my office was prosecuting a sexual assault that occurred at MBCC, and we did not learn until launching our own investigation that the pants that the victim was wearing during her sexual assault were not collected by DOC investigators. The victim requested their release to a private attorney, which was done by MBCC officials, after they received approval from attorneys for the Department of Corrections. This destroyed the chain of custody and was done despite the fact that there was an ongoing investigation.

One of the main factors in reducing sexual assault is to ensure that victims and perpetrators alike know that there is zero tolerance and that punishment will be enforced. This can only be accomplished with cooperation between everyone involved in the investigation and prosecutions of these acts. Under previous administrations, that was not always the case.

Current administration

In the last six months, and just prior to the appointment of the new director for the Department of Corrections, I met with the chief of staff and general counsel of the Governor to address the issues I've outlined in this statement, and was assured that these issues would be addressed at the highest level with the new director.

I have met with Warden Rickey Moham and spent the better part of a day touring the facility and engaging in lengthy discussions about these issues and what we can do to overcome them. I have offered the use of my Violent Crimes Task

Force and 24 hour access to my specialized assistant district attorney and his investigator, and have been assured that they will be called when needed.

I have been in contact with David Cincotta, General Counsel for the Department of Corrections, and believe that we have opened a valuable line of communication that will assist us with many of these issues should they arise again.

In our most recent prosecution of a guard at MBCC, we have seen much improved cooperation and communication with the facility. We have been given unfettered access to our witness and been given anything we have asked for to assist our prosecution. I anticipate that this prosecution will result in a 20 year prison sentence for the defendant.

In short, I have seen positive steps in correcting this environment from the new leadership at the Department of Corrections and at Mabel Bassett Corrections Center and I have no doubt that by working with them we can successfully address the issue of sexual assault at that facility.

It is important to note that I have only addressed issues that pertain to my office, and the ability of my office to effectively prosecute offenders for their actions. The use of the resources and personnel of my office may, or may not be, the most effective resolution to these issues. They are however, the only ones over which I have control .

Sincerely yours,

A handwritten signature in black ink, appearing to read "R. Smothermon", with a long horizontal flourish extending to the right.

Richard L. Smothermon
District Attorney
23rd Judicial District