

**NO ESCAPE:  
Male Rape in U.S. Prisons**

**Human Rights Watch Report, April 2001**

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## PREFACE

*I've been sentenced for a D.U.I. offense. My 3rd one. When I first came to prison, I had no idea what to expect. Certainly none of this. I'm a tall white male, who unfortunately has a small amount of feminine characteristics. And very shy. These characteristics have got me raped so many times I have no more feelings physically. I have been raped by up to 5 black men and two white men at a time. I've had knives at my head and throat. I had fought and been beat so hard that I didn't ever think I'd see straight again. One time when I refused to enter a cell, I was brutally attacked by staff and taken to segregation though I had only wanted to prevent the same and worse by not locking up with my cell mate. There is no supervision after lockdown. I was given a conduct report. I explained to the hearing officer what the issue was. He told me that off the record, He suggests I find a man I would/could willingly have sex with to prevent these things from happening. I've requested protective custody only to be denied. It is not available here. He also said there was no where to run to, and it would be best for me to accept things . . . I probably have AIDS now. I have great difficulty raising food to my mouth from shaking after nightmares or thinking too hard on all this . . . I've laid down without physical fight to be sodomized. To prevent so much damage in struggles, ripping and tearing. Though in not fighting, it caused my heart and spirit to be raped as well. Something I don't know if I'll ever forgive myself for.<sup>1</sup>*

The letter excerpted above was one of the first to reach Human Rights Watch in response to a small announcement posted in *Prison Legal News* and *Prison Life Magazine*, two publications with a wide audience in U.S. prisons. Having been alerted to the problem of prisoner-on-prisoner rape in the United States by the work of activists like Stephen Donaldson of the organization Stop Prisoner Rape, we had decided to conduct exploratory research into the topic and had put a call out to prisoners for information. The resulting deluge of letters—many of which included compelling firsthand descriptions such as this—convinced us that the issue merited urgent attention. Rape, by prisoners' accounts, was no aberrational occurrence; instead it was a deeply-rooted, systemic problem. It was also a problem that prison authorities were doing little to address.

The present report—the product of three years of research and well over a thousand inmate letters—describes the complex dynamics of male prisoner-on-prisoner sexual abuse in the United States. The report is an effort to explain why and how such abuse occurs, who commits it and who falls victim to it, what are its effects, both physical and psychological, how are prison authorities coping with it and, most importantly, what reforms can be instituted to better prevent it from occurring.

### **The Scope of this Report**

This report is limited in scope to male prisoner-on-prisoner sexual abuse in the United States. It does not cover women prisoners, nor does it cover the sexual abuse of male prisoners by their jailers. Human Rights Watch investigated the problem of custodial sexual misconduct in U.S. women's prisons in two previous reports and the issue has been a continuing focus of our U.S. advocacy efforts.<sup>2</sup> As to custodial sexual misconduct against male prisoners, we decided not to include that topic within the scope of this report even though some prisoners who claimed to have been subject to such abuse did contact us. An initial review of the topic convinced us that it involved myriad issues that were distinct from the topic at hand, which is complicated enough in itself.

Even though the notices that Human Rights Watch circulated to announce our research on prisoner-on-prisoner sexual abuse were written in gender-neutral language, we received no information from women prisoners regarding the problem. As prison experts are well aware, penal facilities for men and women tend to differ in important respects. If the problem of prisoner-on-prisoner sexual abuse exists in women's institutions, a possibility we do not exclude, it is likely to take somewhat different forms than in men's prisons.<sup>3</sup>

For several reasons, the primary focus of this report is on sexual abuse in prisons, rather than jails.<sup>4</sup> Most importantly, all of our information save a handful of letters came from prison as opposed to jail inmates. Many of these prisoners did, however, describe sexual abuses they had suffered when previously held in jails, allowing us to gather some information on the topic. Nonetheless, the bulk of our prisoner testimonies and documentation, and all of the information we collected from state authorities, pertain specifically to prisons. Already, with fifty separate state prison jurisdictions in the United States, the task of collecting official information was difficult; obtaining such information from the many thousands of local authorities responsible for city and county jails would have been infinitely more so. Yet we should emphasize that our lack of specific research on jails should be not interpreted as suggesting that the problem does not occur there. Although little research has been done on sexual assault in jails, the few commentators who have examined the topic have found the abuse to be similarly or even more prevalent there.<sup>5</sup>

It is evident to Human Rights Watch, even without having completed exhaustive research into the jail context, that the problems we describe with regard to prisons generally hold true for jails as well. This conclusion derives from the fact that most of the risk factors leading to rape exist in prisons and jails alike. We therefore believe that our recommendations for reform are largely applicable in the jail context, and we urge jail authorities to pay increased attention to the issue of prisoner-on-prisoner sexual abuse.

While this report does not deal specifically with juvenile institutions, we note that previous research, while extremely scanty, suggests that inmate-on-inmate sexual abuse may be even more common in juvenile institutions than it is in facilities for adults.<sup>6</sup> Indeed, a case filed recently by the U.S. Justice Department in federal court to challenge conditions in a Louisiana juvenile institution includes serious allegations of inmate-on-inmate rape.<sup>7</sup>

Finally, our choice of U.S. prisons as the subject of this research, over prisons elsewhere in the

world, in no way indicates that we believe the problem to be unique to the United States. On the contrary, our international prison research convinces us that prisoner-on-prisoner rape is of serious concern around the world. We note that several publications on human rights or prison conditions in other countries have touched on or explored the topic, as have past Human Rights Watch prison reports.<sup>8</sup> Interestingly, researchers outside of the United States have reached many of the same conclusions as researchers here, suggesting that specific cultural variables are not determinative with regard to rape in prison.<sup>9</sup>

## Methodology

The report is primarily based on information collected from over 200 prisoners spread among thirty-seven states. The majority of these inmates have been raped or otherwise sexually abused while in prison, and were therefore able to give firsthand accounts of the problem. Numerous inmates who were not subject to sexual abuse also provided their views on the topic, including information about sexual assaults that they had witnessed. A very small number of inmates who had themselves participated in rape also contributed their perspectives. Much of the information was received via written correspondence, although Human Rights Watch representatives spoke by telephone with a number of prisoners, and personally interviewed twenty-six of them. Prisoner testimonies were supplemented by documentary materials such as written grievances, court papers, letters, and medical records.

Prisoners were contacted using several different methods. Human Rights Watch posted announcements in a number of publications and leaflets that reach prisoners—including *Prison Legal News*, *Prison Life Magazine* (which has since ceased publication), and *Florida Prison Legal Perspectives*—informing them that we were conducting research on the topic of prisoner-on-prisoner sexual abuse and that we welcomed their information. Several organizations that work with prisoners, including Stop Prisoner Rape, put us in contact with additional inmates.

The prisoners who collaborated in our efforts were thus a largely self-selected group, not a random sampling. Previous researchers have conducted quantitative studies using statistically valid techniques in certain U.S. prisons—most recently, in 1998 in seven midwestern state prisons system—but, given that there are some two million prisoners in the United States, this would be difficult to achieve on a national scale. The research on which the present report was based was thus qualitative in nature: it sought to identify systemic weaknesses rather than to quantify actual cases of abuse. The result, we believe, sketches the outlines of a national problem, bridging the gap between academic research on the topic and the more anecdotal writings that occasionally appear in the popular press.

The prisoners with whom Human Rights Watch was in contact, we should emphasize, did not simply serve as a source of case material. Rather, their comments and insights—based on firsthand knowledge and close observation—inform every page of the report.

Besides prisoners, we also obtained valuable information from prison officials, prison experts, lawyers who represent prisoners, prisoners rights organizations, and prisoners' relatives. Written materials including academic studies, books, and articles from the popular press supplemented these



sources. In addition, Human Rights Watch conducted an extensive review of the case law relevant to prison rape in the United States.

## I. SUMMARY AND RECOMMENDATIONS

A Florida prisoner whom we will identify only as P.R. was beaten, suffered a serious eye injury, and assaulted by an inmate armed with a knife, all due to his refusal to submit to anal sex. After six months of repeated threats and attacks by other inmates, at the end of his emotional endurance, he tried to commit suicide by slashing his wrists with a razor. In a letter to Human Rights Watch, he chronicled his unsuccessful efforts to induce prison authorities to protect him from abuse. Summing up these experiences, he wrote: "The opposite of compassion is not hatred, it's indifference."

P.R.'s bleak outlook is not unjustified. Judging by the popular media, rape is accepted as almost a commonplace of imprisonment, so much so that when the topic of prison arises, a joking reference to rape seems almost obligatory. Few members of the public would be surprised by the assertion that men are frequently raped in prison, given rape's established place in the mythology of prison life. Yet serious, sustained, and constructive attention to the subject remains rare. As Stephen Donaldson, the late president of the organization Stop Prisoner Rape, once said: "the rape of males is a taboo subject for public discussion . . . . If ever there was a crime hidden by a curtain of silence, it is male rape."

Without question, the hard facts about inmate-on-inmate sexual abuse are little known. No conclusive national data exist regarding the prevalence of prisoner-on-prisoner rape and other sexual abuse in the United States. Indeed, few commentators have even ventured to speculate on the national incidence of rape in prison, although some, extrapolating from small-scale studies, have come up with rough estimates as to its prevalence. With the staggering growth of the prison population over the past two decades, such ignorance is more unjustifiable than ever.

Prison authorities, unsurprisingly, generally claim that prisoner-on-prisoner sexual abuse is an exceptional occurrence rather than a systemic problem. Prison officials in New Mexico, for example, responding to our 1997 request for information regarding "the problem" of male inmate-on-inmate rape and sexual abuse (the internal quotation marks are theirs), said that they had "no recorded incidents over the past few years." The Nebraska Department of Correctional Services informed Human Rights Watch that such incidents were "minimal." Only Texas, Ohio, Florida, Illinois, and the Federal Bureau of Prisons said that they had more than fifty reported incidents in a given year, numbers which, because of the large size of their prison systems, still translate into extremely low rates of victimization.

Yet prison authorities' claims are belied by independent research on the topic. Indeed, the most recent academic studies of the issue have found shockingly high rates of sexual abuse, including forced oral and anal intercourse. In December 2000, the *Prison Journal* published a study based on a survey of inmates in seven men's prison facilities in four states. The results showed that 21 percent of the inmates had experienced at least one episode of pressured or forced sexual contact since being incarcerated, and at least 7 percent had been raped in their facility. A 1996 study of the Nebraska prison system produced similar findings, with 22 percent of male inmates reporting that they had been

pressured or forced to have sexual contact against their will while incarcerated. Of these, over 50 percent had submitted to forced anal sex at least once. Extrapolating these findings to the national level gives a total of at least 140,000 inmates who have been raped.

An internal departmental survey of corrections officers in a southern state (provided to Human Rights Watch on the condition that the state not be identified) found that line officers—those charged with the direct supervision of inmates—estimated that roughly one-fifth of all prisoners were being coerced into participation in inmate-on-inmate sex. Interestingly, higher-ranking officials—those at the supervisory level—tended to give lower estimates of the frequency of abuse, while inmates themselves gave much higher estimates: the two groups cited victimization rates of roughly one-eighth and one-third, respectively. Although the author of the survey was careful to note that it was not conducted in accordance with scientific standards, and thus its findings may not be perfectly reliable, the basic conclusions are still striking. Even taking only the lowest of the three estimates of coerced sexual activity—and even framing that one conservatively—more than one in ten inmates in the prisons surveyed was subject to sexual abuse.

It is evident that certain prisoners are targeted for sexual assault the moment they enter a penal facility: their age, looks, sexual preference, and other characteristics mark them as candidates for abuse. Human Rights Watch's research has revealed a broad range of factors that correlate with increased vulnerability to rape. These include youth, small size, and physical weakness; being white, gay, or a first offender; possessing Afeminine@ characteristics such as long hair or a high voice; being unassertive, unaggressive, shy, intellectual, not street-smart, or Apassive@, or having been convicted of a sexual offense against a minor. Prisoners with any one of these characteristics typically face an increased risk of sexual abuse, while prisoners with several overlapping characteristics are much more likely than other inmates to be targeted for abuse. Yet it would be a mistake to think that only a minority of extremely vulnerable individuals face sexual abuse. In the wrong circumstances, it should be emphasized, almost any prisoner may become a victim.

The characteristics of prison rapists are somewhat less clear and predictable, but certain patterns can nonetheless be discerned. First, although some older inmates commit rape, the perpetrators also tend to be young, if not always as young as their victims—generally well under thirty-five years old. They are frequently larger or stronger than their victims, and are generally more assertive, physically aggressive, and more at home in the prison environment. They are Astreet smart@—often gang members. They have typically been convicted of more violent crimes than their victims.

The reality of sexual abuse in prison is deeply disturbing. Rapes can be almost unimaginably vicious and brutal. Gang assaults are not uncommon, and victims may be left beaten, bloody and, in the most extreme cases, dead. One of the most tragic and violent cases to come to the attention of Human Rights Watch was that of Randy Payne, a twenty-three year old incarcerated in a Texas maximum security prison. Within a week of entering the prison in August 1994, Payne was attacked by a group

of some twenty inmates. The inmates demanded sex and money, but Payne refused. He was beaten for almost two hours; guards later said they had not noticed anything until they found his bloody body in the dayroom. He died of head injuries a few days later.

Another Texas inmate, who had deep scars on his head, neck, and chest, told Human Rights Watch that the prisoner who inflicted the wounds had raped him eight separate times from July through November 1995. The first time M.R. was raped, which felt like having a tree limb shoved up into me. He told the prison chaplain about it, and the chaplain had him write out a statement for the facility's Internal Affairs department. According to M.R.'s description of the events, the Internal Affairs investigator brought both the victim and the perpetrator into a room together and asked them what had happened. Although M.R. was terrified to speak of the incident in front of the other inmate, he told his story, while the perpetrator claimed the sex was consensual. After both of them had spoken, the investigator told them that lovers' quarrels were not of interest to Internal Affairs, sending them both back to their cells. The guy shoved me into his house and raped me again, M.R. later told Human Rights Watch. It was a lot more violent this time.

M.R. spent several months trying to escape the rapist, facing repeated abuse. He filed grievances over the first couple of rapes in an effort to draw the attention of prison officials; they were returned saying the sexual assaults never occurred. On the last day of December, the rapist showed up on M.R.'s wing and threatened to kill M.R. with a combination lock. I was in the dayroom. I remember eating a piece of cornbread and the next thing I knew I woke up in the hospital, M.R. recalled. A room full of prisoners saw the rapist nearly kill M.R. and then rape him in the middle of the dayroom. The rapist hit M.R. so hard with the lock that when M.R. regained consciousness he could read the word Master the lockmaker on his forehead. Four years later, a Human Rights Watch researcher could still see the round impression of the lock on the right side of his forehead. In all, M.R. suffered a broken neck, jaw, left collarbone, and finger; a dislocated left shoulder; two major concussions, and lacerations to his scalp that caused bleeding on the brain. Notwithstanding the extreme violence of the attack, and despite M.R.'s best efforts to press charges, the rapist was never criminally prosecuted.

Yet overtly violent rapes are only the most visible and dramatic form of sexual abuse behind bars. Many victims of prison rape have never had a knife to their throat. They may have never been explicitly threatened. But they have nonetheless engaged in sexual acts against their will, believing that they had no choice.

Although Human Rights Watch received many reports of forcible sexual attacks, we also heard numerous accounts of abuse based on more subtle forms of coercion and intimidation. Prisoners, including those who had been forcibly raped, all agree that the threat of violence, or even just the implicit threat of violence, is a more common factor in sexual abuse than is actual violence. As one explained:

From my point of view, rape takes place every day. A prisoner that is engaging in

sexual acts, not by force, is still a victim of rape because I know that deep inside this prisoner do not want to do the things that he is doing but he thinks that it is the only way that he can survive.

Once subject to sexual abuse, whether violently or through coercion, a prisoner may easily become trapped into a sexually subordinate role. Prisoners refer to the initial rape as **Aturning out@** the victim, and the suggestion of transformation is telling. Through the act of rape, the victim is redefined as an object of sexual abuse. He has been proven to be weak, vulnerable, **Afemale,@** in the eyes of other inmates. Regaining his **Amanhood@C** and the respect of other prisoners **C** can be extremely difficult.

Stigmatized as a **Apunk@** or **Aturn out,@** the victim of rape will almost inevitably be the target of continuing sexual exploitation, both from the initial perpetrator and, unless the perpetrator **Aprotects@** him, from other inmates as well. **AOnce someone is violated sexually and there is no consequences on the perpetrators, that person who was violated then becomes a mark or marked,@** an Indiana prisoner told Human Rights Watch. **AThat means he=s fair game.@** His victimization is likely to be public knowledge, and his reputation will follow him to other housing areas, if he is moved, and even to other prisons. As another inmate explained: **AWord travels so Fast in prison. The Convict grape vine is Large. You cant run or hide.@**

Prisoners unable to escape a situation of sexual abuse may find themselves becoming another inmate=s **Aproperty.@** The word is commonly used in prison to refer to sexually subordinate inmates, and it is no exaggeration. Victims of prison rape, in the most extreme cases, are literally the slaves of the perpetrators. Forced to satisfy another man=s sexual appetites whenever he demands, they may also be responsible for washing his clothes, massaging his back, cooking his food, cleaning his cell, and myriad other chores. They are frequently **Arented out@** for sex, sold, or even auctioned off to other inmates, replicating the financial aspects of traditional slavery. Their most basic choices, like how to dress and whom to talk to, may be controlled by the person who **Aowns@** them. Their name may be replaced by a female one. Like all forms of slavery, these situations are among the most degrading and dehumanizing experiences a person can undergo.

J.D., a white inmate in Texas who admits that he **Acannot fight real good,@** told Human Rights Watch that he was violently raped by his cellmate, a heavy, muscular man, in 1993. **AFrom that day on,@** he said, **AI** was classified as a homosexual and was sold from one inmate to the next.@ Although he informed prison staff that he had been raped and was transferred to another part of the prison, the white inmates in his new housing area immediately **Asold@** him to a black inmate known as Blue Top. Blue Top used J.D. sexually, while also **Arenting@** his sexual services to other black inmates. Besides being forced to perform **Aall types of sexual acts,@** J.D. had to defer to Blue Top in every other way. Under Blue Top=s dominion, no task was too menial or too degrading for J.D. to perform. After two and a half months of this abuse, J.D. was finally transferred to a safer environment.

Six Texas inmates gave Human Rights Watch firsthand accounts of being forced into this type of

sexual slavery, having even been sold or rented out to other inmates. Numerous other Texas prisoners confirmed that the practice of sexual slavery, including the buying and selling of inmates, is commonplace in the systems more dangerous prison units. Although Texas, judging from the information received by Human Rights Watch, has the worst record in this respect, we also collected personal testimonies from inmates in Illinois, Michigan, California, and Arkansas who have survived situations of sexual slavery.

Rape's effects on the victim's psyche are serious and enduring. Victims of rape often suffer extreme psychological stress, a condition identified as rape trauma syndrome. Many inmate victims with whom Human Rights Watch has been in contact have reported nightmares, deep depression, shame, loss of self-esteem, self-hatred, and considering or attempting suicide. Serious questions arise as to how the trauma of sexual abuse resolves itself when such inmates are released into society. Indeed, some experts believe that the experience of rape threatens to perpetuate a cycle of violence, with the abused inmate in some instances turning violent himself.

Another devastating consequence of prisoner-on-prisoner rape is the transmission of HIV, the virus which causes AIDS. Several prisoners with whom Human Rights Watch is in contact believe that they have contracted HIV through forced sexual intercourse in prison. K.S., a prisoner in Arkansas, was repeatedly raped between January and December 1991 by more than twenty different inmates, one of whom, he believes, transmitted the HIV virus to him. K.S. had tested negative for HIV upon entry to the prison system, but in September 1991 he tested positive.

It must be emphasized that rape and other sexual abuses occur in prison because correctional officials, to a surprising extent, do little to stop them from occurring. While some inmates with whom Human Rights Watch is in contact have described relatively secure institutions where inmates are closely monitored, where steps are taken to prevent inmate-on-inmate abuses, and where such abuses are punished if they occur many others report a decidedly laissez faire approach to the problem. In too many institutions, prevention measures are meager and effective punishment of abuses is rare.

Prisoner classification policies include among their goals the separation of dangerous prisoners from those whom they are likely to victimize. In the overcrowded prisons of today, however, the practical demands of simply finding available space for inmates have to a large extent overwhelmed classification ideals. Inmates frequently find themselves placed among others whose background, criminal history, and other characteristics make them an obvious threat. Indeed, in the worst cases, prisoners are actually placed in the same cell with inmates who are likely to victimize them sometimes even with inmates who have a demonstrated proclivity for sexual abusing others.

Another casualty of the enormous growth of the country's prison population is adequate staffing and supervision of inmates. The consequences with regard to rape are obvious. Rape occurs most easily when there is no prison staff around to see or hear it. Particularly at night, prisoners have told Human Rights Watch, they are often left alone and unsupervised in their housing areas. Several inmates have reported to Human Rights Watch that they yelled for help when they were attacked, to no avail.

Although correctional staff are supposed to make rounds at regular intervals, they do not always abide by their schedules. Moreover, they often walk by prisoners' cells without making an effort to see what is really happening within them. The existence of difficult to monitor areas, especially in older prisons, compounds the problem. As one Florida inmate summed up: "Rapes occur because the lack of observation make it possible. Prisons have too few guards and too many blind spots."

An absolutely central problem with regard to sexual abuse in prison, emphasized by inmate after inmate, is the inadequate and, in many instances, callous and irresponsible response of correctional staff to complaints of rape. When an inmate informs an officer that he has been threatened with rape or, even worse, actually assaulted, it is crucial that his complaint be met with a rapid and effective response. Most obviously, he should be brought to a place where his safety can be protected and where he can set out his complaint in a confidential manner. If the rape has already occurred, he should be taken for whatever medical care may be needed and a step that is crucial for any potential criminal prosecution where physical evidence of rape can be collected. Yet from the reports that Human Rights Watch has received, such responses are rare.

The criminal justice system also affords scant relief to sexually abused prisoners. Few public prosecutors are concerned with prosecuting crimes committed against inmates, preferring to leave internal prison problems to the discretion of the prison authorities; similarly, prison officials themselves rarely push for the prosecution of prisoner-on-prisoner abuses. As a result, perpetrators of prison rape almost never face criminal charges.

Internal disciplinary mechanisms, the putative substitute for criminal prosecution, tend to function poorly in those cases in which the victim reports the crime. In nearly every instance Human Rights Watch has encountered, the authorities have imposed light disciplinary sanctions against the perpetrator—perhaps thirty days in disciplinary segregation—if that. Often rapists are simply transferred to another facility, or are not moved at all. Their victims, in contrast, may end up spending the rest of their prison terms in protective custody units whose conditions are often similar to those in disciplinary segregation: twenty-three hours per day in a cell, restricted privileges, and no educational or vocational opportunities.

Disappointingly, the federal courts have not played a significant role in curtailing prisoner-on-prisoner sexual abuse. Despite the paucity of lawyers willing to litigate such cases, some inmates do nonetheless file suit against the prison authorities in the aftermath of rape. They assert that the authorities' failure to take steps to protect them from abuse violates the prohibition on "cruel and unusual punishments" contained in the Eighth Amendment to the U.S. Constitution. Such cases are often dismissed in the early stages of litigation. Moreover, the rare case that does survive to reach a jury typically finds the inmate plaintiff before an audience that is wholly unreceptive to his story. While there have been a few generous damages awards in prison rape case, they are the very rare exceptions to the rule.

Unfortunately the legal rules that the courts have developed relating to prisoner-on-prisoner sexual abuse create perverse incentives for authorities to ignore the problem. Under the *Adeliberate indifference* standard that is applicable to legal challenges to prison officials= failure to protect prisoners from inter-prisoner abuses such as rape, the prisoner must prove to the court that the defendants had *actual knowledge* of a substantial risk to him, and that they disregarded that risk. As the courts have emphasized, it is not enough for the prisoner to prove that the risk was obvious and a reasonable prison official would have noticed it. Instead, if a prison official lacked knowledge of the risk no matter how obvious it was to anyone else he cannot be held liable. In other words, rather than trying to ascertain the true dimensions of the problem of prisoner-on-prisoner sexual abuse, prison officials have good reason to want to remain unaware of it.

## Recommendations

The existing situation, marked by a wholesale disregard for prisoners' right to be free of violent rape and other forms of unwanted sexual contact, must be reformed. Human Rights Watch calls on the United States authorities to demonstrate their commitment to prevent, investigate, and punish prisoner-on-prisoner sexual abuse in men's prisons and jails, as required under both international and national law. We make the following recommendations to the federal and state governments, urging them to step up their efforts to address this gross violation of human dignity.

## Recommendations to Federal Authorities

## I. To the U.S. Congress

- C Congress should amend or repeal those provisions of the Prison Litigation Reform Act (PLRA) that severely hinder prisoners, nongovernmental organizations, and the Department of Justice in their efforts to remedy unconstitutional conditions in state correctional facilities. The following changes should, at a minimum, be considered:
- C the repeal of 18 United States Code Section 3626(a)(1), which requires that judicially enforceable consent decrees contain findings of federal law violations;
  - C the repeal of 18 United States Code Section 3626(b), which requires all judicial orders to terminate two years after they are issued; and
  - C the restoration of funding for special masters= and attorneys= fees to the levels that prevailed before the passage of the PLRA.
- C Congress should pass legislation conditioning states= eligibility for funding for prison construction and equipment purchases on efforts by state correctional authorities to combat prisoner-on-prisoner sexual abuse. Such efforts should include comprehensive protocols to govern staff response to cases of prisoner-on-prisoner sexual abuse, the establishment of a sexual abuse prevention program that includes inmate orientation and staff training, and the collection of data on prisoner-on-prisoner sexual abuse.
- C Congress should appropriate the funds necessary to enable the Department of Justice to



conduct increased and thorough investigations of prisoner-on-prisoner sexual abuse and to enjoin prohibited conduct pursuant to the Civil Rights of Institutionalized Persons Act (CRIPA).

- C Congress should pass legislation requiring states to certify that their prisoner grievance procedures satisfy the requirements of the Civil Rights of Institutionalized Persons Act (CRIPA). It should also review CRIPA provisions pertaining to the certification of prisoner grievance procedures to ensure that certified procedures will function effectively for complaints of prisoner-on-prisoner sexual abuse.
- C Congress should hold hearings on the problem of male inmate-on-inmate sexual abuse.
- C Congress should adopt legislation to withdraw the restrictive reservations, declarations and understandings that the United States has attached to the ICCPR and the Torture Convention.
- C Congress should adopt legislation to implement the ICCPR and the Torture Convention within the United States, in particular, to establish that the provisions of these treaties are legally enforceable in U.S. courts.

## **II. To the Civil Rights Division of the U.S. Department of Justice**

- C The Special Litigation Section of the Civil Rights Division should investigate reports of prisoner-on-prisoner sexual abuse to ascertain whether they rise to the level of a ~~A~~pattern or practice.<sup>@</sup> Any allegations that meet this standard should be vigorously prosecuted. Allegations that do not meet this standard should be forwarded to state authorities for investigation.
- C When investigating conditions in any men's correctional facility, the Special Litigation Unit should be extremely attentive to the issue of prisoner-on-prisoner sexual abuse and cognizant of the difficulties of obtaining information on the issue. One member of every investigative team, preferably someone with particularized expertise in the area of sexual abuse, should be named as the point person on this topic.
- C The Special Litigation Section should name an attorney to be responsible for overseeing its investigations of prisoner-on-prisoner sexual abuse, including formulating proactive strategies for obtaining information on such abuse. All complaints lodged with the section that are relevant to this topic should be copied to this person. The person should familiarize him- or herself with the complexities of the topic by meeting with experts and reviewing relevant studies and reports.

## **III. To the National Institute of Corrections**

- C The National Institute of Corrections (NIC) should develop training programs on the topic of male prisoner-on-prisoner sexual abuse for both high-level corrections officials and line staff. In drafting a curriculum for the training, the NIC should consult with outside experts who have studied the topic. The object of these programs should be to sensitize corrections officials as to

the importance of taking effective steps to prevent and remedy prisoner-on-prisoner sexual abuse, and to provide them with the tools needed to do so.

- C The NIC should draft model investigatory procedures for allegations of prisoner-on-prisoner sexual abuse.
- C The NIC should make an effort to collect, maintain and disseminate data relating to prisoner-on-prisoner sexual abuse.

## **Recommendations to State Authorities and the Federal Bureau of Prisons (BOP)**

### **I. To State Departments of Corrections (DOCs) and the BOP**

- C DOCs should draft comprehensive protocols to govern staff response to cases of prisoner-on-prisoner sexual abuse. Such protocols should contain guidelines on investigation, evidence collection, outside reporting, and medical and psychological treatment of victims of abuse. The guidelines should emphasize the importance of the prompt collection of evidence, and the immediate medical care of victims.
- C DOC staff, particularly line staff, should be vigilant and attentive to the problem of prisoner-on-prisoner sexual abuse while being cognizant of the difficulties of detecting it. In particular, line officers should react appropriately to signs of abuse. Any inmate claiming that he has been subject to sexual abuse, or that he is in imminent danger of such abuse, should be immediately removed to a holding cell in another area, and a prompt investigation of his claims should be instituted.
- C All prisons should at all times be staffed with sufficient numbers of correctional officers to ensure effective monitoring and control of the prison population. Officers should make regular rounds, closely monitoring prisoners' treatment and ensuring that abuses do not occur.
- C DOCs should routinely report all cases of rape or other criminal sexual abuse to local police and prosecutorial authorities for possible criminal prosecution. They should make clear to such authorities that such reporting is not merely a bureaucratic formality; rather, that they expect cases to be fully investigated and, if the evidence warrants it, prosecuted to the full extent of the law.
- C In addition to referring cases out for criminal prosecution, DOCs should take appropriate disciplinary actions against the perpetrators of sexual abuse. Administrative proceedings should be instituted, a prompt and thorough investigation should be conducted, and if guilt is established an appropriately serious punishment should be imposed. In no instance should the perpetrator simply be transferred to another unit.
- C A section of the orientation programming provided to incoming male prisoners should be

dedicated to educating them about the issue of prisoner-on-prisoner sexual abuse. It should emphasize, in particular, the right not to be subject to such abuse, and how that right can be enforced. It should also inform prisoners of how and to whom to report such abuse; what scenarios commonly lead to sexual abuse, what to do if abuse occurs (mentioning, in particular, the importance of prompt reporting and evidence collection); and options such as protective custody.

- C DOCs should never hold minors together with adult prisoners. The two groups should be kept entirely separate from each other.
- C Prisoners who, by virtue of the risk factors discussed in chapter IV of this report, are clear potential targets for sexual abuse should be warned of their possible vulnerability and offered protective custody or other protective options.
- C DOCs should avoid double-celling prisoners. If double-celling is unavoidable, corrections authorities should take extreme care in selecting appropriate cellmates, giving due regard to the risk factors described in chapter IV of this report and to inmates' preferences. Prisoners with a known history of committing sexual abuse or harassment should never be double-celled, whether or not they have been subject to disciplinary proceedings or prosecution.
- C All DOC employees, from high-level officials to line staff, should receive detailed and realistic training on the issue of prisoner-on-prisoner sexual abuse. Line staff, in particular, should be trained regarding how to respond to inmate complaints or fears of sexual abuse, risk factors increasing prisoners' likelihood of being subject to such abuse, and common scenarios leading to such abuse. Particular attention should be paid to the problem of staff homophobia, a problem that frequently reveals itself in an unsympathetic and unprofessional response to the problem of prisoner-on-prisoner sexual abuse, particularly when gay inmates (or inmates perceived as gay) are the target of such abuse.
- C Appropriate classification policies should be instituted and strictly followed to separate at-risk inmates from potential aggressors. Particular attention should be given to the risk factors described in chapter IV of this report.
- C The conditions of protective custody and safekeeping units should not be punitive in nature. Although heightened security concerns may entail additional restrictions on inmate movement, conditions should otherwise be kept as normal as possible. In particular, educational, vocational, and other program opportunities should be made available to inmates held in such units.
- C Psychological counseling should be promptly provided to all victims of prisoner-on-prisoner sexual abuse.

- C Given the element of racial bias in many instances of prisoner-on-prisoner sexual abuse, steps should be taken to address racial tensions in the inmate population. DOC staff should receive racial sensitivity training. Racial slurs and other forms of harassmentCwhether from inmates or staffCshould not be tolerated.
- C In the design of correctional facilities, attention should be given to the problem of prisoner-on-prisoner violence and sexual abuse. All areas should be easily monitored by and accessible to DOC staff. Cells should be designed for a single inmate.
- C Effective data collection should be undertaken. Statistics on prisoner-on-prisoner sexual abuse must be disaggregated from statistics on overall prison violence. Information on disciplinary actions and criminal prosecutions of perpetrators of prisoner-on-prisoner sexual abuse should also be collected. Data should be compiled and made public on an annual basis.
- C In general, abusive prison conditions, marked by overcrowding, custodial abuse, lack of work, vocational, and educational opportunities, etc., should be remedied, as such conditions encourage inmate-on-inmate violence and sexual abuse.

## **II. To State and Local Prosecutors**

- C Strictly enforce state criminal laws prohibiting rape by investigating and prosecuting instances of prisoner-on-prisoner rape. Do not abdicate responsibility for prison abuses by allowing corrections authorities to handle them via internal disciplinary procedures.

## CASE HISTORIES OF S.M. AND C.R.

### S.M.

*Two of them held me down while the other raped me . . . I stayed in my cell all day, skipped lunch. I didn't say anything to my cellmate about it. I was so embarrassed I had let it happen to myself.<sup>10</sup>*

*Q. Do you know that if you would comply with the T.D.C. [prison] rules on shaving and cutting your hair, then you would be released from closed custody, right?*

*A. I feel after so much amount of time, and in that time period I would be assaulted. And the reason for my continuing to disobey the rules is to be placed in special cell restrictions where I stay in my cell basically 24 hours a day.<sup>11</sup>*

S.M. was only eighteen when he entered Texas prison; he was twenty-one when he was first raped. But from the very beginning predatory inmates targeted him. S.M.'s strategy for avoiding victimization was to violate prison rules—to refuse to shave, to cut his hair, or go to work—so that, as punishment, he would be kept safe in a locked cell. For three years, he managed to protect himself in this way.

S.M. started out in March 1994 at High Tower Unit, a safe minimum security prison. He only stayed there for a few months and then was transferred to another unit to get psychiatric treatment for depression. Within a week, other prisoners were threatening him, trying to coerce him into giving up his allowance for the prison commissary. Although S.M. is six feet tall, he is not a fighter. He has a gentle, subdued personality and a young face.

S.M. was on the minimum custody level, but he was exposed to closed custody (maximum security) prisoners at his job working in the fields. Fearful because of threatening notes he had received, S.M. refused to go out to work one day and was punished by being placed on special cell restrictions, essentially, being forced to stay all day in his cell. But the disciplinary violation he received made his custody level drop down to closed custody, where he ended up with a much more violent set of prisoners. When S.M. entered the general population of closed custody after his thirty days under special cell restrictions, the inmates swarmed me. They all wanted me to pay protection: the blacks, whites and Mexicans. I didn't know how to fight, couldn't stick up for myself.<sup>12</sup>

S.M. was forced to ~~Arise~~ to pay protection but to escape to a locked cell he began violating prison rules by refusing to shave, to cut his hair, and to work. He spent nearly all of his three years at this facility locked in his cell under special cell restrictions. Sometimes other inmates were placed together with him but he spent much of the time alone.<sup>13</sup> Having complained to guards about his problems with other inmates, to no avail, he thought this was the best way to stay safe.

In January 1997 S.M. was transferred to another unit and placed on a medium custody wing. He wanted to manage with other prisoners and for a month or so this seemed possible. But soon some prisoners who knew him from the previous facility were moved to his wing. They spread rumors about the fact that I rode, S.M. related. Then the inmates started swarming. They knew I was easy.<sup>14</sup>

Under threat of assault, S.M. had his family deposit money into the bank accounts of people named by some Crips gang members who had targeted him. And that apparently wasn't enough, S.M. later testified under oath. And I had three of them run in my cell and sexually assault me.<sup>15</sup> Two of the gang members held him down while the other anally raped him. It was morning, and S.M. could hear the television on in the dayroom; although he yelled he knew the officers outside would not hear him. Before the prisoners left his cell they warned that if he told anyone they would eventually get him, no matter where he went.

S.M. was stunned, in shock, he later said.<sup>16</sup> He skipped lunch, and then at dinner approached a sergeant to try to explain the situation, but he could not manage to describe it directly. He simply told the sergeant that he was having serious problems, he claims that the sergeant dismissed him.

The very next day he refused to go to work in order to be placed on special cell restrictions. He was locked in a cell with a Mexican gang member who, S.M. said, had heard rumors about him. One night a few days later, the other prisoner attacked S.M., pointing a shank at him and threatening to kill him. Out of fear, I let him do what he wanted, S.M. said. It was impossible to tell a CO because I was still locked in the cell with the guy. The CO could walk away and I'd get stabbed. It went on for three days in a row: we had anal sex two times whenever the guy wanted.<sup>17</sup>

After the first rape, S.M. filled out a form requesting to see a psychiatrist, stating that he was contemplating suicide. Three days later, S.M. was brought in to see him. S.M. immediately broke down and started crying, telling him what had happened. After a medical examination, S.M. was brought to speak to investigators working for the prison's gang intelligence division. He told them exactly what happened. They asked if he wanted to prosecute the case and S.M. responded no. He was afraid of being labeled a snitch of increasing the likelihood of being assaulted again.

The psychiatrist put him on single-cell restriction for his protection. At a hearing of the Unit Classification Committee (UCC) a few months later it was recommended that S.M. be placed on safekeeping in another prison. For four months, S.M. was in a single cell in transit status, waiting for state officials to review the UCC's decision about safekeeping. In July 1997, the state authorities rejected S.M.'s placement on safekeeping, and he was placed back in medium custody with a single cell restriction.

The last time S.M. was raped was the worst, he later said: the most violent and the most painful. It was in October 1997, and the prison officials were insisting that S.M. return to the general population

of closed custody. S.M. tried to refuse but they placed him in handcuffs and brought him to a cell. His new cellmate, an African American prisoner, told S.M. that he had heard about him—that he knew that S.M. was a willing homosexual—but that even if S.M. wasn't willing, they were still going to have sex.<sup>18</sup> S.M. was terrified but he tried to stall. He pretended to go along with his cellmate but put off having sex. At breakfast time, after his cellmate had left, he told the guards what was happening: that he was being threatened with rape. The guards locked him in a shower and called a sergeant. When the sergeant arrived, S.M. explained his situation, but the sergeant said, that he didn't care, that he would force me back into the cell if he had to, that if I didn't come out of the shower that he would beat me himself.<sup>19</sup>

S.M. agreed to return to his cell but when the officers unlocked the shower he ran to the dayroom at the front of the wing. The sergeant then escorted S.M. to the front desk and handcuffed him, saying, A>you're going back to the cell whether you like it or not.-@<sup>20</sup> The officers placed S.M. in the recreation yard for a time, then informed him that he could either return to his cell voluntarily or be forced to return. S.M. replied that he was refusing housing.

I was begging them: ATake me to prehearing detention.@ They refused; they handcuffed me and carried me back to the cell, and threw me in it. By then it was around 3 a.m. My cellie started hitting me. He was a huge guy. I gave up.<sup>21</sup>

By then, because of his past assaults, S.M. was aware that proof of rape could be obtained by the use of a rape kit. He desperately wanted the prison authorities to collect evidence of the rape. Early in the morning, when his cellmate left the cell, he reported the rape to a guard, who told him that he would tell the sergeant what had happened. But for several hours, no one came to investigate. When S.M. was released from his cell for lunch, he found a sergeant and reported the rape. The sergeant handcuffed S.M. and left him on the recreation yard for an hour; finally around noon S.M. was brought to the infirmary and examined for rape. He was later informed that the examination showed no evidence of rape—unsurprising given the amount of time that had elapsed since the assault occurred.

Since the last rape, S.M. has been held in a single cell. When Human Rights Watch interviewed him, he was in a psychiatric unit, having tried to commit suicide in late January 1999. Because of the countless disciplinary cases he had accrued for violating prison hygiene rules, he still had several years of his ten year sentence left to serve, and was feeling depressed and scared about the future. His projected release date was August 2003.

## C.R.

*i am a gay Spanish male. . . . back in A92@i was on the Hightower unit and i was Beating and Raped By Texas Syndicate gang members. So the officers Shipped me to Ferguson and Placed me on safe-keeping . . . . Then in A94@i got Removed From safe-keeping because i had A3@fights in A9@months. Then i was Placed on Close-Custody Population and i was beating in the Cell Several Times by Mexican*

*Mafia gang member=s and then They Started Saling me to The Black inmate=s and if i Refused i got Beat up. Well During this Time i Contracted HIV by a Black inmate . . . . Where in the middle of may i was Beating and ARaped@agian. i Reported it and went to the Doctor 2 Day=s later and the Doctor Did not even Do a ARape Kit.@ Then i Was moved to a Different Cell with a hispanic inmate who on August of A95@attacked me and Beat me for not Participate in sexual act=s with him. Then i was moved to another Close Custody wing where i was Raped and was Paying Protection to another inmate. So That=s when i Decided to Protect Myself and was Placed in seg for it.<sup>22</sup>*

C.R. was only nineteen when he was sent to prison in Texas for violating his probation restrictions. He was first placed in a minimum security unit, which he remembered as a relatively easy, relaxed place. Because of disciplinary problems, he was soon transferred to a higher security facility. AI messed up,@he admitted. AIIt was easy to get into trouble, so I did.@<sup>23</sup>

A handsome, outgoing bisexual man, C.R. is originally from San Antonio, Texas. When he arrived at the new unit, he quickly understood that his origins would be a defining factor for his treatment there. Hispanic prisoners grouped themselves by hometowns: for each locality, the dayroom had a separate bench, or benches, controlled by inmates from the area. Unfortunately for C.R., he was the only prisoner on his wing from San Antonio. While other Hispanic prisoners had to fight once or twiceCto be testedCbefore they were allowed to sit on a bench, C.R. was forced to fight constantly.

C.R. told Human Rights Watch that one day about a month after his transfer to the wing, when he was asleep in his cell, a group of six Hispanic prisoners slipped into his cell and raped him. They beat him up with locks and canned goods, and then held him down on the bed. Afterwards, C.R. told a guard what happened. According to C.R.=s account, he was not brought to a doctor for any testing, nor was any investigation done into the incident, but he was transferred to another prison and placed on safekeeping status.

Prisoners in Asafekeeping,@although they live in their own separate housing areas, still have a fair amount of contact with regular inmates; they meet them in the showers, the cafeteria, and at work. As many safekeeping inmates have emphasized to Human Rights Watch, these encounters are the opportunity for inmates from general population to harass and threaten them. The general population inmates generally despise prisoners in safekeeping, viewing them as weak, cowardly, and homosexual. C.R. explained:

If you were on safekeeping, the Hispanics didn=t want anything to do with you. You couldn=t even claim a hometown. They=d say you were disgracing their hometown . . . . Whenever we were around them, they=d tell us, >get your ass out of here.=<sup>24</sup>

Prisoners from C.R.=s previous unit had been transferred to the general population of his new unit; he



said that they were particularly aggressive toward him. C.R. ended up getting into several fights with general population inmates, he said, including one time in the cafeteria when a prisoner from general population tried to stab him. AI was young, C.R. remembered. AI didn't like being disrespected by the dudes in general population.

In mid-1994, C.R. was transferred out of safekeeping because of these fights. The hearing officers told him that if he was able to fight then he could handle general population. They placed him in a close custody (maximum security) unit. There, C.R. was constantly having to fight to protect himself.

I broke my hand fighting and lost my two front teeth. It was a very, very violent camp. You had to box; you weren't allowed to wrestle. I had to fight lots of guys back to back one after the other. You get tired; you make mistakes. If you're knocked down and don't get up, you are dead, you have to ride. The bosses will stand there and watch it.<sup>25</sup>

C.R. said that Mexican Mafia gang members ended up making him an associate with them, then they sold him to a group of African American inmates. C.R. believes that he contracted HIV during this period. He claims that he reported the sexual abuse several times and finally, in March 1995, he was transferred to another prison unit. At his initial classification hearing at the new unit, C.R. said, he requested safekeeping, telling the warden that he was gay and vulnerable to abuse, but the warden replied that he didn't care. C.R. was again placed in close custody.

In mid-May, C.R. said, he was beaten and raped again. A Hispanic inmate popped the door to his cell in the middle of the night, entered and anally raped him. A few hours later, C.R. reported the rape to guards who were making their rounds, but they did not remove him from his cell. The next morning, he went to the infirmary, but was not able to see a doctor for two days. By that time, it was too late to conduct a rape examination.

C.R. was moved onto a different wing where his problems continued. On August 31, 1995, he said, his cellmate badly beat C.R. because he refused to have sex with him. C.R. was then transferred to another wing, where he said he was extorted for money and was again raped. He filed a life endangerment grievance toward the end of the year but prison officials again denied him safekeeping. Finally, in February 1996, prison officials confiscated two homemade weapons from his cell and placed him in administrative segregation, where he was given a single cell.

C.R. filed suit against prison officials in federal district court, challenging their repeated failure to protect him from sexual assault. In a hearing before the court, C.R. testified that he wanted the court to make it known to prison officials that they need to do a better job of investigating such incidents and to order prison officials to place him in safekeeping.<sup>26</sup> The court reviewed C.R.'s disciplinary history, agreeing with prison officials that he was not a good candidate for safekeeping.<sup>27</sup> Without disputing the fact that C.R. had been subject to a year and a half of violent sexual abuse, the court then

conclusorily stated that C.R. had failed to allege facts showing the Defendants disregarded an excessive risk to his safety.<sup>28</sup> Not only did the court dismiss C.R.'s claim, the court deemed it frivolous, lacking any basis in law.

## II. BACKGROUND

With one out of every 140 people in the United States behind bars, the question of prisoner-on-prisoner sexual abuse can no longer be ignored. The staggering numbers of people filling the country's prisons and jails mean that what happens in these institutions is necessarily of consequence to society, for most prisoners do, finally, return to the communities from which they came. Over half a million people are released from prison each year, and many millions more are cycled through local jails.<sup>29</sup> To disregard the egregious abuses that affect these people is to forget that prisons are not cut off from the world outside.

### **The Size and Growth of the U.S. Inmate Population**

By any measure, the U.S. inmate population is enormous—in absolute numbers, in the proportion of U.S. residents behind bars, and in comparison with global figures. With the country's prisons and jails holding some two million adults—roughly one in every 140 persons—the rate of incarceration in the United States is about 727 prisoners per 100,000 residents.<sup>30</sup> No other country in the world is known to incarcerate as many people, and only a small handful of countries have anything approaching a similar rate of incarceration.<sup>31</sup> Most European countries, for example, imprison fewer than 100 people per 100,000 residents, a rate more than seven times lower than that of the United States.

These high figures do not represent longstanding patterns of incarceration, but instead are the consequence of radical changes in criminal justice policies over the past two decades. Incarceration rates remained relatively stable at much lower levels through most of the twentieth century, rising and falling according to factors such as economic growth and depression, but remaining within reasonable limits. Rates began to climb somewhat in the mid-1970s, with the growth rate accelerating in the 1980s and particularly the 1990s. In 1985, the inmate population stood at three-quarters of a million; by 1990 it was over 1.1 million. Since that time, on average, the inmate population has grown 6.5 percent annually, with the federal prison population growing at an even faster rate than that of the states.<sup>32</sup>

These increases reflect an important overall shift in state and federal sentencing rules. In particular, they are indicative of a general trend toward longer prison terms, more stringent parole policies, mandatory minimum sentences and, most recently, *three strikes* laws.<sup>33</sup> The sentences handed out in the United States for a variety of crimes, including nonviolent crimes, are now among the longest anywhere.<sup>34</sup>

### **The Structure of Imprisonment**

Rather than a single national system of imprisonment, the United States has a federal correctional system, separate state correctional systems, and thousands of jails managed at the local level. They make up a complex network of people and institutions, involving thousands of correctional and detention facilities, hundreds of thousands of employees, and billions of dollars in operating costs.

The conceptual distinction should be recognized between correctional facilities*C*i.e., prisons*C*which are designed for convicted inmates*C*and detention facilities*C*i.e., jails*C*which are designed to hold unsentenced inmates on a relatively short-term basis after arrest and pending trial. In practice, nonetheless, there is a degree of overlap between the two types of facilities. Inmates serving sentences of a year or less normally remain in local jails and, due to prison overcrowding, even some inmates serving long sentences may be housed there.<sup>35</sup> The resulting mixing of convicted and unconvicted prisoners contravenes international human rights standards.<sup>36</sup>

As of July 1999, slightly more than two-thirds of all U.S. prisoners were incarcerated in federal or state prisons, with the remainder detained in local jails.<sup>37</sup> The federal inmate population was estimated at 129,678, of which 117,331 were housed in facilities operated by the federal Bureau of Prisons.<sup>38</sup> These facilities held persons convicted of federal crimes, that is, crimes prosecuted in the federal court system under federal law. The state prison population*C*consisting of persons convicted of state crimes*C*totaled more than 1.1 million. The single largest state correctional systems were those of California, with over 150,000 prisoners, and Texas, with over 130,000.<sup>39</sup> Nationally, there are some 1,375 state-operated penal institutions (mostly prisons but including other types of facilities).<sup>40</sup>

The expansion in prison capacity in recent years, via new prison construction, has not kept pace with the growth in the inmate population. Overall, in mid-1995, the nation's 1,500 adult correctional facilities had a capacity of 976,000 beds, well short of the number needed. The degree of overcrowding varied from system to system, with some state prison systems operating at up to 89 percent over their design capacities, and the federal correctional system at 19 percent over its rated capacity.<sup>41</sup>

Nearly one-third of all U.S. inmates are held in jails and other short-term detention facilities operated by the county or local governments where they are located.<sup>42</sup> Such facilities are normally managed by county sheriff's departments, city police, or other local-level law enforcement agencies. There are approximately 3,300 jails in the United States, most of which are small in size. Indeed, according to a 1988 survey, two-thirds of local jails had daily populations of fewer than 50 inmates. Although overall jail capacity figures appear roughly sufficient, numerous jails are woefully overcrowded.<sup>43</sup>

Another trend over the last fifteen years affecting both prisons and jails is that of *privatization*,<sup>@</sup> by which states pay private companies to construct and manage their penal facilities. As of May 1999, private correctional facilities in the United States had an overall capacity of 132,933 beds.<sup>44</sup> Leading the way toward the corporate management of corrections was the state of Texas, with forty-three such facilities. It is likely that privatization, unless accompanied by stringent public oversight, brings with it an increased risk of inmate mistreatment and abuse.<sup>45</sup>

With or without private prisons, the costs of incarceration in the United States are enormous. Nearly \$40 billion annually is spent on prisons and jails, making corrections one of the largest single

items on many states' budgets, above their spending on higher education or child care.<sup>46</sup>

### **Characteristics of the U.S. Prisoner Population**

A review of U.S. inmate statistics discloses certain conspicuous facts. To begin with, the prisoner population of the United States is largely male: as is true around the world, men make up more than 90 percent of all prisoners.<sup>47</sup> Also, in comparison with people outside prison, the inmate population is heavily weighted toward ethnic and racial minorities, particularly African Americans. Overall, African Americans make up some 44 percent of the prisoner population, while whites constitute 40 percent, Hispanics 15 percent, with other minorities making up the remaining 1 to 2 percent.<sup>48</sup> Relative to their proportions in the U.S. population as a whole, black males are more than twice as likely to be incarcerated as Hispanic males and seven times as likely as whites.

Some two-thirds of U.S. prisoners are held for nonviolent offenses, many of them drug offenses. Indeed, the number of prisoners incarcerated for drug crimes has increased sevenfold in the last twenty years.<sup>49</sup> To a large extent, the disproportionate impact of incarceration on African Americans reflects the impact of the country's drug war, as arrest rates for drug offenses are six times higher for blacks than they are for whites.<sup>50</sup>

The majority of prisoners are between eighteen and forty years old, but the trend toward longer sentences and more restrictive parole policies has swelled the ranks of elderly inmates.<sup>51</sup> At the same time—and in violation of international standards—there has been a notable increase over the past decade in the numbers of juveniles held in adult penal facilities.<sup>52</sup> As of 1995, an average of 6,000 juveniles were held in adult jails on any given day.<sup>53</sup> If found guilty of a crime, such juveniles were normally sent to adult prisons, which housed several thousand young offenders by the late 1990s.<sup>54</sup> Indeed, in 1997, an estimated 7,400 juveniles were admitted to state prison.<sup>55</sup> A 1995 survey of state prison practices found that twenty-seven correctional departments held such juveniles in adult prisons; since then these numbers have likely risen.<sup>56</sup>

### **Conditions and Abuses**

Overcrowded and understaffed, filled with too many idle prisoners facing long terms of incarceration, many U.S. penal facilities are rife with extortion, violence, and other abuses. Due to public reluctance to spend any more than necessary to warehouse the criminal population, inmates generally have scant work, training, educational, treatment or counseling opportunities. A small minority of correctional staff physically abuse inmates; many more are simply indifferent to abuses that inmates inflict on each other.

Guard violence, if not endemic, is more than sporadic in many penal facilities. In 1999, for example, news stories detailed a series of horrific stories of guard abuse—stories of inmates being beaten with fists and batons, fired at unnecessarily with shotguns or stunned with electronic devices, slammed face first onto concrete floors, and even raped by correctional officers.<sup>57</sup> In some instances, entire state prison systems are found to be pervaded with abuse. A March 1999 federal court decision

concluded, for example, that the frequency of Awholly unnecessary physical aggression@perpetrated by guards in Texas prisons reflected a Aculture of sadistic and malicious violence@ found there.<sup>58</sup>

Inter-prisoner violence, extortion, harassment, and other abuse is even more common. Indeed, it has been estimated that as many as 70 percent of inmates are assaulted by other inmates each year.<sup>59</sup> In 1998, the most recent year for which national statistics are available, seventy-nine inmates were killed and many thousands more were injured so severely that they required medical attention.<sup>60</sup> In 1997, 10 percent of state inmates and 3 percent of federal inmates reported being injured in a fight since entering prison.<sup>61</sup> Recognizing the problem, a recent study of New York state prisons focusing on criminal conduct by inmates spoke of the Aextraordinary amount of crime committed in state prisons annually,@ and concluded that rather than preventing crime, in many cases incarceration Amerely shifts the locus of criminal activity away from neighborhoods to correctional facilities.@<sup>62</sup>

As in the streets, gang activity is an inescapable fact of present-day U.S. prisons. Gangs exist in every prison system and every large jail.<sup>63</sup> In 1992, the American Correctional Association (ACA) conducted a national survey of prison gang activity, identifying over 1,000 different gangs (labeled Asecurity threat groups@) with a total membership of over 46,000.<sup>64</sup> The actual numbers are probably much higher, however.<sup>65</sup> The large majority of prison gangs have counterpart groups on the street; indeed some of them, such as the Crips and the Bloods, are primarily known as street gangs. Gang members are much more likely than other prisoners to be involved in violent and extortionate activities.<sup>66</sup>

Personal antagonisms are the cause of some inter-prisoner violence, but financial incentives probably drive a larger proportion of it. Not only are significant numbers of inmates indigent, they are generally not compensated for prison jobs or are paid extremely low wages, leaving prisoners without outside financial support to seek other ways to obtain money. Extortion is common in many penal facilities, with many inmates being forced to pay Aprotection@money in order to be safe from physical attack. In addition, almost every prison has an illegal economy based on contraband goods and services: everything from sex to drugs to alcohol to weapons. Much prisoner-on-prisoner violence, particularly gang-related violence, centers around efforts to seize or maintain control of this economy.<sup>67</sup>

Abuses against inmates, whether committed by other prisoners or by guards, are rarely effectively prosecuted. Because police do not patrol prisons to monitor crime there, prison abuses are only prosecuted when they are reported. Although inmates nominally enjoy the right to file complaints to local police and prosecutors regarding prison crimes, Human Rights Watch's research suggests that local officials generally ignore complaints made by prisoners.<sup>68</sup> Nor do prison employees often report crimes that occur in their facilities.<sup>69</sup> Although overall figures are lacking, it is evident that criminal charges are brought only in the most egregious casesCor in instances of prisoner violence against guardsCand that many instances of violence, extortion or harassment do not even result in administrative sanctions against the responsible party. The rule of impunity holds true both for inter-prisoner abuses and abuses committed by guards against inmates. In California, for example, not a single local prosecutor has ever prosecuted a guard for prison shootings that have killed thirty-nine inmates and

wounded more than 200 over the past decade.<sup>70</sup>

Punishments meted out by internal disciplinary mechanisms are the only sanction prisoners are likely to face for committing prison abuses. All penal facilities have administrative rules and some form of disciplinary procedure for adjudicating violations of those rules. Sanctions for violations range from simple reprimands to long-term confinement in disciplinary isolation to loss of good-time credit.<sup>71</sup>

As will be described in detail below, those prisons most conducive to inter-prisoner violence are because of lax supervision, poor inmate classification, a failure to prosecute abuses, few work, training or educational opportunities, intense racial antagonisms, and other problems are also those most likely to be plagued by inmate-on-inmate sexual abuse.

### **Prisoner classification and separation**

Most prisons, and even some jails, have a system of prisoner classification by which the inmate population is divided into groups. At the institutional level is the well known distinction between minimum, medium and maximum security facilities, with prisoners assigned to a given security level according to variables such as the severity of their offense, their perceived dangerousness, their expected length of incarceration and their history of escapes or violence.<sup>72</sup> Within a given facility, similarly, prisoners may be divided up among different security levels, housing placements, programs, etc. Initial classification decisions are normally made when the prisoner enters the prison system; the prisoner's conduct is then supposed to determine subsequent decisions as to changes in classification status. The goal of classification is to address security and program needs—reducing violence, limiting security risks, and facilitating rehabilitation efforts.

In the nineteenth and much of the twentieth century, racial segregation was commonplace in U.S. prisons and jails—indeed, in some cases segregation was statutorily required. In the South, blacks and whites were typically housed in separate prisons, while in northern states prisoners were segregated by race within the same facility.<sup>73</sup> A Supreme Court decision banned the practice in 1968,<sup>74</sup> but nonetheless many penal facilities continue to separate inmates by race, sometimes relying on surrogate variables such as gang affiliation or following inmate preferences for self-segregation.<sup>75</sup>

Prisons and jails typically have a protective custody classification for isolating and protecting prisoners believed likely to be victimized by others. Prisoners assigned to this status are usually housed in separate areas of the facility, in which conditions are often highly restrictive. Nationally, nearly 2 percent of prison inmates are being held in protective custody, although the average in a few states is over 5 percent.<sup>76</sup> In addition, some states have devised statuses similar to protective custody such as safekeeping in which vulnerable inmates may be held. Texas, for example, makes little provision for protective custody, but keeps a few thousand inmates in safekeeping.<sup>77</sup> Yet another common management technique is to transfer threatened prisoners to another facility, away from the inmates seeking to victimize them.

As one court explained, proper classification is essential to the operation of an orderly and safe prison . . . . It enables the institution to gauge the proper custody level of an inmate, to identify the inmate's educational, vocational, and psychological needs, and to separate non-violent inmates from the more predatory.<sup>78</sup> Conversely, the failure to properly classify and separate prisoners is a significant contributing factor to prison violence.

State correctional departments generally have written policies that set out the criteria relevant to classification decisions. Many prison systems have a central classification office that oversees such decisions, but the primary decision-makers are the classification committees in each institution. Given the importance of proper inmate classification, these decisions are frequently hotly disputed: prisoners often see them as arbitrary and unfair. Yet there are very few legal constraints on the classification powers of correctional departments. In general, prisoners have no legal basis for challenging such decisions, as due process protections are deemed to apply only when the changed conditions are extraordinarily harsh.<sup>79</sup>

### **Racial tensions**

Racial antagonisms are another important contributing factor to prison violence and abuse. In the prison context, it bears emphasizing, the racial tensions that pervade U.S. society are significantly magnified. Even though in prison, more so than in the surrounding society, members of different racial groups are placed into close contact with each other, racial divisions are one of the dominant features of inmate life. Prisoners' social relationships are largely determined by race; their gang affiliation, if they have one, is racially defined; and whatever racist beliefs they may have held prior to their imprisonment are likely to be significantly strengthened over the course of their stay in prison.<sup>80</sup>

In their correspondence with Human Rights Watch, both black and white prisoners emphasized the importance placed on racial distinctions in prison. A white prisoner asserted: *I hate to say this but if you weren't racist when you came to prison more than likely you will be when you leave. In Texas prisons race is the main issue and until people wake up and realize that nothing will change!*<sup>81</sup>

Describing the prevalence of racist beliefs in prison, an African American prisoner who described himself as relatively oblivious to racial distinctions before entering prison said:

Most blacks see whites as *The Man* or *The Law*! . . . I may be beating a dead horse when I say this, but black men as a whole do not trust white law officials, male or female, from judge to lawyer. Most feel that the legal system is fundamentally racist and officers are the most visible symbol of a corrupt institution & with good reason . . . . So is it any wonder that when a white man comes to prison, that blacks see him as a target.<sup>82</sup>

The resentment voiced by this inmate was echoed by numerous other African American prisoners.



Many were acutely aware of racial disparities in imprisonment, and of incidents such as the Rodney King beating and the police shooting of Ghanaian immigrant Amadou Diallo. One inmate went so far as to assert:

The prison system is just a stage of the final solution to get rid of America's so-called problem, especially the Blacks and the Latinos. I ask the question [is it] bad luck, good luck or a set up that the prison system in the U.S. is half filled with Blacks when in fact they don't even make-up 2 of the population of the U.S.?<sup>83</sup>

The anger of many black inmates toward whites is met by white inmates' hatred of blacks. The white supremacist movement has many adherents in the prison system. Many white prisoners told Human Rights Watch that they were uncomfortable with blacks and would prefer to live in a racially segregated environment. A few espoused virulently racist views. More so than African American prisoners, many whites asserted that the prison experience had made them racist. Cor, as they tended to put it, Aracially aware. @

An African-American inmate sent Human Rights Watch a racist pamphlet that he said was circulating among white prisoners. Explaining his view of why many incarcerated whites were attracted to white supremacist groups, he said:

Because of the lop-sided ratio of whites to minorities, most whites in T.D.C.J. rush into the A.B. or A.C. (Aryan Brotherhood & Aryan Circle, respectively) . . . . The A.B. & A.C. create humongous propaganda to subtly turn non-racist incarcerated whites into bigoted fanatics. Believe it or not, the Protocols of Zion are still making the rounds real regular with the Turner Diaries & this [pamphlet] I'm sending you.

Whatever the causes, race has become the great divide in prison. Not only whites versus blacks, it is also Hispanics versus blacks, whites versus Hispanics, and so on. The names of many prison gangs—the Mexican Mafia, the Black Gangster Disciples, the Aryan Circle, the White Knights, the Black Guerrilla Family, the Aryan Brotherhood, and the Latin Kings, among others—indicate their racially exclusionary nature, while even gangs with non-racially-defined names, such as the Bloods, are nonetheless largely restricted to a single racial group. Many prison riots are racially motivated, sometimes pitting one racially defined gang against another.<sup>84</sup>

The level of racial antagonism appears to vary from jurisdiction to jurisdiction, with prisons in many Southern states being particularly tense. Certain prison systems seem to have almost no positive social interaction—not even the most trivial—between members of different races. A white prisoner in Texas, where racial tensions are particularly acute, summed up the situation there:

On maximum security wings, blacks and whites don't even sit together. The Blacks have there own benches and the Mexicans have theres and the Whites if there are

enough to fight for one has there. And if a white went to sit on a Black bench he would be jumped on ditto for blacks and Mexicans. Even in celling assignments the whites will refuse to live with a colored or a mexican because there cellie who has friends will steel there stuff or they will jump on the white dude so they refuse to live with them. And if a white dude kicks it or talks to blacks or mexicans a lot of the whites will run court on him (court means an ass whoppin). Its the same for blacks and mexicans. . . . The whites hate the Blacks and Mexicans because those two races have a lot of people in here and take advantage of us by making the small and week ones ride or turn them out, and the big ones have to fight all the time.<sup>85</sup> If you come in here as a non-racial white man and you fight for your property more than likely when you leave you'll be a full fledged KKK member! There are a lot of racial groups here and with the way the whites get treated, they get mixed up in those groups and become haters. Prison is the best recruiting ground the white power movement has!<sup>86</sup>

### **Grievance Mechanisms**

Prisoners nominally have the opportunity to complain of abuses and other unfair practices using internal grievance mechanisms. Such mechanisms typically involve a great deal of paperwork with many forms and several-stage appeals processes often to little practical effect.

Grievance procedures are usually initiated with the filing of a grievance form by a prisoner. These forms often include a box that can be marked if the situation is of an emergency nature. Emergency grievances are supposed to be handled immediately, while normal grievances are supposed to be processed within a set period, usually fifteen days or a month.

The flaws of grievance mechanisms will be discussed in greater detail below, but in general they tend to be plagued by a lack of confidentiality, which may expose the complaining prisoner to retaliation by others, a bias against prisoner testimony, and a failure to seriously investigate prisoners' allegations. Grievances are frequently denied with rote responses that show little individualized attention to the underlying problem.

Under the Prison Litigation Reform Act, passed in 1996 (see discussion below), prisoners must exhaust the remedies open to them via internal grievance procedures before they are allowed to file suit in federal court to challenge prison abuses.<sup>87</sup> This change in the law makes the deficiencies of grievance mechanisms all the more troubling.

### **Oversight of Treatment and Conditions**

A great many prison abuses occur because prisons are closed institutions subject to little outside scrutiny. Such abuses become much less likely when officials know that outsiders will be inspecting their facilities and that ill-treatment and poor conditions will be denounced. Regular access to penal facilities by outside monitors—from judges to national and international human rights groups to independent government bodies—can thus play an immensely positive role in preventing or minimizing

human rights abuses. Recognizing this principle, international standards of good prison practice emphasize the need for independent and objective monitoring of penal facilities.<sup>88</sup>

Prison monitoring in the United States falls far short of what is needed. Unlike some countries, the U.S. has no official prison monitoring body. Instead, responsibility for outside oversight of detention conditions varies from state to state, with some jurisdictions having few if any monitoring mechanisms. The American Correctional Association (ACA), a private nonprofit organization, administers a voluntary accreditation program for U.S. prisons and jails under which conditions and policies are evaluated, yet the majority of state and local penal facilities choose not to participate in this scheme.<sup>89</sup> Some states have inspector generals or other outside ombudsmen who visit penal institutions, while others have investigatory bodies within corrections departments that operate with a degree of independence. A few states, such as Illinois and New York, allow certain nongovernmental groups to visit their prisons.<sup>90</sup> Human Rights Watch has, however, found that some states routinely deny requests for access made by it and other nongovernmental bodies.

Local jails, even more than state correctional facilities, tend to escape outside oversight. Some states have established state jail standards by which to evaluate the conditions in their jails, but compliance with them is largely unenforced.

The lack of comprehensive and effective outside monitoring mechanisms has meant that the federal judiciary has become, however reluctantly, a sort of default national prison oversight body. But as described in detail in Chapter III, judicial monitoring of prison abuses has declined in effectiveness over the past decade, just as the inmate population has grown dramatically.

## CASE HISTORY OF R.G.

### R.G.

*My abuse started in the County Jail where I was raped by four inmates . . . . [In prison, a few years later,] I was put in a cell with a gang member who made me give him oral sex. . . . [After reporting the incident to two officers,] I went to see a psychologist who told me that I'd caused that inmate to sexually abuse me because I walked around thinking that I was better than the others. He said that I should come down out of the air . . . . [After being transferred to another facility and sexually abused again,] I was put back in that same building, in a different cell. Still I was being asked for sex and told that I would have to give myself over one way or another; at this point (looking back on the matter), I can see that I was going through a brake down mentally. Anyway that night I'd made up my mind that I was taking my life for it seemed as if that was the only way out of that Hell. So the sleeping medication they was giving me, I saved for 8 days which came to 800 mg and I took them . . . . It is truly impossible to put into words what goes through one's mind when becoming a victim of rape. Being made into a person of no self worth, [being] remade into what ever the person or gang doing the raping wants you to be.*

CR.G., California inmate, October 1, 1996

*Inmate is an effeminate with a proclivity toward being sexually assaulted. He cannot mainline at San Quentin.*

*Date: 01/02/91 P. Hicks, M.D., Chief Psychiatrist*

R.G. is a gay, middle-aged, African American prisoner whom prison psychiatrists have classified as effeminate.<sup>91</sup> Skinny and of medium height, R.G. weighs only 135 pounds and sports thick, black-rimmed glasses. Outside of prison, his looks might peg him as a nerdy intellectual: bookish but not necessarily effeminate. Rare among inmates, he claims two years of college education, having worked for a time as a substitute teacher in Baltimore. All of his crimes are nonviolent: car theft, burglary, etc.

Although R.G. was raped in prison, it was in jail that he suffered the most vicious sexual abuse.<sup>91</sup> The first incident occurred in 1988, when he was confined at a Los Angeles jail for tampering with a vehicle—charges that were later dropped. R.G. was placed in a two-man cell, and on his first night there was awakened at about 1 a.m. by his cellmate and three others. Sticking a sharpened mop bucket handle into the soft skin of his neck, they warned him, “You’re going to do what we want or you’re going to die.” They pulled him off the top bunk, where he had been sleeping, and threw him onto the bottom bunk, where they spent over an hour taking turns orally and anally penetrating him.

That morning in the inmate dining hall R.G. reported the rape to a lieutenant and said he refused to return to his cell. The lieutenant showed no interest in discovering who had committed the rape, but he did move R.G. to the Asoftie tank@ on the thirteenth floor of the facility, where R.G. had no further problems during the four months he was held there.<sup>92</sup>

In 1993, R.G. was arrested on burglary charges and confined at the Los Angeles County Jail. There he was placed in a large overcrowded dormitory that held at least 500 people. Due to a bunk shortage, R.G. had to find a place to sleep on the floor, near a corner of the room. He was awakened at about 4 a.m. by six members of the Crips gang. They held a razor to his throat and forced him to give them oral sex. At 6 a.m., when all of the prisoners were brought out for breakfast, R.G. tried to report the rape to the sergeant on duty, for whom Ait was a laughing matter.@ The sergeant forced R.G. to return to the dormitory, where he broke down, sobbing hysterically. AI just fell apart; I was scared that the situation would continue, and what really got me was the coldness of the CO when I told him what happened, that he didn't care. I was crying and crying and couldn't stop shaking.@

R.G. kept banging on the window of the dormitory and finally a different officer brought him to see a lieutenant. After hearing his story, the lieutenant said he never should have been placed in that ward. He sent R.G. to a medical facility, where he was again placed in the Asoftie tank.@

That August R.G. was transferred into the California prison system. In his initial interview with a classification officer, he explained that he was gay and had been raped by gang members, and that he needed to be housed with another gay person, or someone of small build, or a first-timerC in his words, a Asoftie@C and not a gang member. The sergeant on duty that night was concerned about R.G.'s safety and assigned him to a single cell, but the sergeant on duty the next night placed him in a two-man cell.

R.G.'s new cellmate was an African American gang member who became immediately aggressive, bragging about his gang connections and his violent crimes. He soon grabbed R.G. by the collar and told him, AYou can do this the easy way or you can do it the hard way.@ Fearing that he would be badly beaten, R.G. submitted to performing oral sex. Afterwards he threw up and sat on his bed awake all night long. The next morning he told a white correctional officer what happened and the officer did nothing, saying AI don't have time to be baby-sitting you.@ When the prisoners were let out of their cells for dinner that evening, R.G. approached an African American officer and told him what happened. The officer brought him to a sergeant, who moved him to a single cell. His former cellmate was transferred to another prison, but no disciplinary investigation of the incident was ever conducted.

In December 1993, R.G. was transferred to a correctional facility in Calpatria, where he again explained his vulnerability to the classification staff. He was held for about two weeks in a single cell, but was moved to a two-man cell on the evening of January 5, 1994. As the door to the cell closed, standing before R.G. was a huge African American inmate who explained that he had Abought@R.G.: that he had Apaid two caps of weed and two sacks of heroin@ to have R.G. moved to his cell. AMy homeboy that's the clerk in the program office saw you and made out a 154 for the lieutenant to sign to

get you here. You're my property now.">@

The inmate was a prison drug dealer, and to impress R.G. he pulled out bags of narcotics: marijuana, heroin, and embalming fluid used on cigarettes. He said he made \$1,700 a month selling drugs, and Aif I x-sexed him up=Cthose were his exact wordsCI wouldn't have to worry about a thing . . . . He was friendly, a friendly demon, but I knew I was in a very vicious situation.@ That evening the cellmate offered R.G. a cup of coffee:

After my third swallow my system started feeling funny, and I knew that it was laced. I threw the rest of the coffee away and got in bed, then I threw up all over myself . . . . I'm feeling really sick, and he starts saying get up out of bed and have sex with him. I said I'm sick; he said Ayou don't have to do much, just take your pants off.@ (I go to bed fully dressed now.) I told him, AI can't, I'm sick.@ AWell just look down here,@ he said. I did, and saw him masturbating. Then he came. I stayed up all night, depressed, scared. I just couldn't face more abuse. I thought I'd rather die. In the morning when he woke up I had tied the end of my sheet around my wrist to get my veins bulging and I held a razor in my hand. I said I'd kill myself if he didn't let me leave. He knew I wasn't kidding and he said Adon't worry, I'll get you out of here.@ He couldn't afford for me to kill myself because there'd be an investigation and he had all those drugs. He called the guards and said Aget him out of here.@ They saw me in that setup and took me to a room with nothing in it but a rubber mattress. They kept me there for fourteen days, giving me Benedril. Every day the doctors would come in and ask me how I was feeling and then talk amongst themselves as if I wasn't there. I had nightmares that the night nurse noticed. . . . I had no chance to explain my situation to anyone. They weren't concerned about why I wanted to commit suicide, just that I wanted to.

A few weeks later, after being placed back out into the general prison population, R.G. attempted suicide:

I saved up eight days' worth of Benedrils. I drank them with some Kool-Aid and wanted to die. A CO woke me up; he was a Christian; he told me God had a better plan for me. He got the MTA [medical technician] and they pumped my stomach.<sup>93</sup>

After recuperating from his suicide attempt, R.G. was transferred to a protective custody unit at another California prison where he stayed for over a year. Later, he was moved to another facility, and then to another, staying in several prisons in all. He has been sexually pressured on several occasions, but only once since Folsom, in December 1997, was he forced to orally copulate another prisoner.

In late 1994, R.G. filed suit against the prison authorities for allowing him to be sexually abused and for failing to provide him with appropriate psychological treatment after his suicide attempt. His attempts to obtain legal assistance were unsuccessful: the judge denied his motion for appointment of

counsel and public interest lawyers turned him down, saying that they only litigated class actions. Acting without legal counsel, he drafted his own legal papers, charging prison officials with showing **A**deliberate indifference<sup>@</sup> for his well-being. He asserted that their indifference was manifested in **A**the fact that they housed plaintiff under conditions they knew put [him] in danger, [placing] plaintiff in a cell with a inmate who had just received two (2) life sentences consecutively, this action then resulted in plaintiff being assaulted sexually.<sup>@<sup>94</sup></sup> The case was summarily dismissed in late 1996.

### III. LEGAL CONTEXT

Prisoners are legally protected from human rights abuses under both U.S. and international law. Domestic legal protections include U.S. constitutional provisions, notably the Eighth Amendment, and statutory provisions such as the Civil Rights of Institutionalized Persons Act (CRIPA). International legal protections include binding treaty standards as well as a plethora of interpretative guidelines, the most comprehensive of which are the U.N. Standard Minimum Rules for the Treatment of Prisoners.

The weakness of these protections, both national and international, lies less in their substantive shortcomings than in the fact that they are not properly enforced.

#### **National Legal Protections**

Several U.S. constitutional provisions bar the abusive treatment of prisoners, primary among them the Eighth Amendment, which prohibits cruel and unusual punishment. In reviewing these protections, it is important to remember that their enforcement depends on the combined efforts of an array of governmental authorities, including the courts, Congress, and numerous federal and state executive officials. Unfortunately, actual practice in this area falls far short of authoritative pronouncements.

#### **The rise and fall of federal court supervision of prison conditions**

It was not until the late 1960s that U.S. courts began to take an active role in monitoring prison conditions and mandating their reform. Until then, the judicial branch had assumed an extremely deferential posture with regard to state and federal correctional authorities, leaving them to administer prisons as they saw fit.<sup>95</sup> As Supreme Court Justice Clarence Thomas once pointed out, in advocating a return to past practice: AFor generations, judges and commentators regarded the Eighth Amendment as applying only to torturous punishments meted out by statutes or sentencing judges, and not generally to any hardship that might befall a prisoner during incarceration.<sup>96</sup> Indeed, the Ahands off@ approach advanced by Thomas held sway through the mid-twentieth century.

Nominal advances in the recognition of prisoners' rights were made in the 1940s and 1950s, but only in the 1960s and 1970s did the federal courts begin to make meaningful inroads against the abuses that plagued the nation's correctional institutions. The animating sentiments of the era, which tended to favor rehabilitation over punishment, made abusive prison conditions appear unjust, unnecessary, and counterproductive. Tragedies such as the 1972 rioting and subsequent killings at New York's Attica prison galvanized public attention to prison abuses. Following the pattern set with regard to school desegregation and other civil rights issues, a generation of prison reformers looked to the courts to rectify abuses, garnering an impressive string of legal victories.<sup>97</sup>

From the 1980s through the 1990s, in contrast, the pendulum swung back toward harsher, more punitive treatment of prisoners. Effective judicial oversight of conditions, in particular, was greatly reduced. Several factors encouraged this trend. In general, the rehabilitative view of incarceration was



increasingly called into question by commentators who, focusing on high recidivism rates, advocated in its place a more explicitly retributive model of imprisonment.<sup>98</sup> At the same time, numerous conservative judges appointed by President Ronald Reagan joined the federal bench, most of them anxious to repudiate the activist approach represented by close judicial monitoring of prison conditions.<sup>99</sup> A series of Supreme Court rulings cut back on prisoners' rights, imposing difficult to meet requirements of showing intent and actual damages.

Meanwhile, public outrage over crime and criminals gave rise to the stereotype of the pampered prisoner living in a college campus-like setting, watching television all day, and filing frivolous lawsuits over petty grievances. Catering to such sentiments, officials shifted toward tougher, more punitive forms of incarceration: building so-called supermax units, discontinuing inmate college programs, stripping prisons of weight equipment, even reinstituting chain gangs in several states.<sup>100</sup> Prisoners' right of access to the courts came under particular attack, as government officials vied with each to find the most outrageous legal claims to compile into lists of Top Ten Frivolous Inmate Lawsuits.<sup>101</sup>

The backlash against prisoners' rights culminated in the 1996 passage of the Prison Litigation Reform Act (PLRA). The reform of the statute's title was a misleading reference to the severe limitations the PLRA placed on the possibility of challenging and remedying abusive prison conditions through litigation. A comprehensive set of constraints on prison litigation, the PLRA invalidates all settlements that do not include explicit findings that the challenged conditions violate federal law or the constitution. Since prison authorities are reluctant to admit to such findings, this requirement makes it much more difficult for the parties to a prison conditions suit to reach a negotiated settlement. In addition, the PLRA requires that prospective relief in prison conditions suits, such as consent decrees (judicial orders enforcing voluntary settlements), be narrowly drawn.<sup>102</sup> It also arbitrarily terminates court orders against unlawful prison conditions after two years, regardless of prison authorities' degree of compliance with the orders. Further, it restricts the grant of attorneys' fees for successful prison conditions suits, severely reducing the financial viability of even the most sorely-needed prison reform efforts. Other objectionable provisions of the act limit prisoners' access to the courts by imposing court filing fees on certain indigent prisoners, and bar the recovery of damages for pain and suffering not accompanied by physical injury.<sup>103</sup> In short, without explicitly cutting back on prisoners' substantive rights, which are constitutionally protected, the PLRA creates formidable obstacles to the enforcement of these rights.

The PLRA has been challenged as unconstitutional in several jurisdictions, but to date the federal courts have upheld its restrictive provisions.<sup>104</sup>

### **Constitutional protections on prisoners' rights**

Lawsuits challenging physical abuses against prisoners, including those in which prison authorities are sued for failing to protect inmates from attack by other inmates, usually rely upon the protection of the Eighth Amendment to the U.S. Constitution and its prohibition on cruel and unusual

punishments.<sup>105</sup> In cases involving pretrial detainees, as opposed to convicted prisoners, the Fifth Amendment's Due Process Clause is applicable; courts have ruled that it guarantees pretrial detainees similar protections as those provided convicted prisoners under the Eighth Amendment.<sup>106</sup>

In interpreting the Eighth Amendment, the courts have generally held that it requires prison officials to provide humane conditions of confinement and to take reasonable measures to guarantee the safety of the inmates.<sup>107</sup> As the Supreme Court explained in 1989, when the State takes a person into its custody and holds him there against his will, the Constitution imposes upon it a corresponding duty to assume some responsibility for his safety and general well being.<sup>108</sup> Not every discomfort or injury suffered by prisoners is legally actionable, however. Instead, as the Supreme Court has emphasized, the Eighth Amendment only bars punishments not just poor treatment in itself, but the unnecessary and wanton infliction of pain.<sup>109</sup> Therefore, to prove an Eighth Amendment violation, plaintiffs must show not only objective injury, either physical or psychological, but also a subjective intent on the part of authorities to cause that injury.

To pass the requirement of objective injury, the prisoner's pain must be so serious that it violates contemporary standards of decency.<sup>110</sup> The subjective intent requirement that the responsible prison official acted with a sufficiently culpable state of mind is somewhat more complex.<sup>111</sup> To begin with, the applicable standard varies according to whether the suit alleges excessive physical force or abusive policies or conditions of incarceration. In cases alleging excessive physical force by correctional staff, a prisoner must prove that prison officials acted maliciously and sadistically for the very purpose of causing harm.<sup>112</sup> In cases challenging abusive policies or conditions of incarceration, a prisoner must demonstrate that officials acted with deliberate indifference in subjecting him to such conditions.<sup>113</sup> The latter standard is normally applied in cases of prisoner-on-prisoner rape.

It is well established that the Eighth Amendment not only bars direct guard brutality, it also requires prison officials to protect prisoners from violence inflicted by fellow prisoners.<sup>114</sup> A number of federal courts have specifically examined the protections provided by the Eighth Amendment in the context of prisoner-on-prisoner sexual abuse. In *Farmer v. Brennan*, a 1994 decision involving the rape of a transsexual inmate, the Supreme Court ruled that a prison official violates the Eighth Amendment if, acting with deliberate indifference, he exposes a prisoner to a substantial risk of sexual assault.<sup>115</sup> Confirming the previous holdings of a number of lower courts, the *Farmer* court acknowledged that prison rape is constitutionally unacceptable; indeed, the court stated explicitly that being sexually abused in prison is not part of the penalty that criminal offenders pay for their offenses.<sup>116</sup>

While the Supreme Court's rhetorical stand against prisoner-on-prisoner violence and sexual abuse is encouraging as a statement of principle, it ignores the formidable legal barriers to the success of suits challenging such abuses. The primary obstacle to such cases is the subjective intent requirement, mentioned above. As will be described in greater detail in chapter VIII of this report, proving terrible conditions or terrible abuses is not enough; the prisoner must also prove that the prison official who is

sued knew of and disregarded the conditions.<sup>117</sup>

Notably, this actual knowledge requirement is imposed not only in cases in which prisoners seek damages for past abuses, but also in cases in which prisoners seek remedial action to prevent continuing abuses.<sup>118</sup> In other words, a court will allow the infliction of abusive conditions if such conditions cannot be shown to be the result of prison officials' deliberate indifference. As noted in the concurrence to the leading Supreme Court decision on this question, such a rule means that inhumane conditions can easily go unredressed due to the courts' unnecessary and meaningless search for deliberate indifference.<sup>119</sup>

The failure of prison authorities to provide proper treatment for the physical injuries, communicable diseases, and psychological suffering that often accompany sexual abuse is also subject to scrutiny under the Eighth Amendment. The courts have held that the medical care a prisoner receives is just as much a condition of his confinement as the food he is fed, the clothes he is issued, and the protection he is afforded against other inmates.<sup>120</sup> Although the inadvertent failure to provide adequate medical care is not legally actionable, the deliberate deprivation of proper medical treatment is.<sup>121</sup>

### **The role of the U.S. Department of Justice in enforcing the U.S. Constitution**

Constitutional protections on prisoners' rights may be enforced by the U.S. Department of Justice (DOJ) acting under statutory authority. The DOJ may criminally prosecute a person acting under color of state law<sup>122</sup> for violating a prisoner's constitutional rights, under Sections 241 and 242 of Title 18 of the United States Code.<sup>123</sup> The DOJ also may investigate allegations of unconstitutional conditions in a state's prisons under the Civil Rights of Institutionalized Persons Act and bring a civil suit against a state. In addition, the Violent Crime Control and Law Enforcement Act of 1994 added Title 42, United States Code, Section 14141, under which the DOJ also may enforce the constitutional rights of prisoners through civil suits. All of these statutes are, however, subject to prosecutorial discretion. The DOJ has no affirmative obligation to enforce them in every instance, nor, it should be emphasized, does it have the resources to do so.

### ***Criminal Enforcement: Title 18, U.S. Code, Sections 241 and 242***

The evidentiary burden imposed under Title 18, United States Code, Sections 241 and 242, makes it extremely difficult to convict someone under criminal law for violating a prisoner's constitutional rights. To convict a public official, the DOJ must not only prove beyond a reasonable doubt that a constitutional right has been violated, but also that the public official had the specific intent to deprive the prisoner of that right.<sup>124</sup> The specific intent requirement creates a substantial burden for the DOJ to meet because it must show that an official knowingly and willfully participated in violating a prisoner's constitutional right.<sup>125</sup>

The U.S. government has provided only limited resources for the prosecution of such suits.<sup>126</sup> According to official data, the DOJ's Criminal Section receives some 8,000-10,000 complaints annually, the majority involving allegations of official misconduct, and files charges in forty to fifty

criminal cases less than 1 percent of complaints.<sup>127</sup> Only some of these cases involve correctional officials; the rest involve other law enforcement officials.

### ***Civil Enforcement under CRIPA***

The DOJ may also institute civil suits for abuses in state and local prisons which violate the civil rights of prisoners under the Civil Rights of Institutionalized Persons Act (CRIPA).<sup>128</sup> Congress passed CRIPA in 1980 to enable the federal government to investigate and pursue civil suits against state institutions that the attorney general suspects of violating the U.S. Constitution. Prior to CRIPA's enactment, the government had only limited authority to intervene in private lawsuits alleging a violation of constitutional rights inside state institutions.<sup>129</sup> Before suing a state under CRIPA, the DOJ must have a reasonable cause to believe that a state institution is engaging in a pattern or practice of subjecting prisoners to egregious or flagrant conditions that violate the U.S. Constitution. Reasonable cause may be obtained through an investigation of a prison. According to the DOJ, it decides to investigate when it acquires a sufficient body of information to indicate the existence of abuses that may rise to the level of a constitutional violation.<sup>130</sup> The DOJ receives information from a variety of sources, including individual prisoners, public interest and defense attorneys, and corrections staff.

Once the DOJ decides to investigate, it must first file a letter with the state and the prison's director stating its intention to investigate and giving state officials seven days' notice. During an investigation, DOJ investigators, attorneys with the DOJ and consultants conduct personal interviews with prisoners, tour the facilities, and review documentation and institutional records to determine whether unconstitutional conditions exist. The DOJ takes the position that its authority under CRIPA to determine whether unconstitutional conditions exist necessarily includes the right to enter state prisons to examine such conditions.<sup>131</sup> In 1994, one federal court in Michigan refused to issue a court order giving the DOJ access to investigate.<sup>132</sup> This decision, however, appears to reflect the exception rather than the rule.<sup>133</sup>

Once the on-site investigation is complete, the DOJ must issue a letter to the state that summarizes its findings and sets forth the minimum steps necessary to rectify any unconstitutional conditions found. Under CRIPA, forty-nine days after this letter is received by the state, the DOJ may sue the state to remedy the constitutional violations. The U.S. attorney general must personally sign the complaint and, according to DOJ representatives, all possibility of a settlement must be exhausted. As a result, suits are generally filed well after the forty-nine-day period has passed. The DOJ has said that CRIPA contemplates that the state and the DOJ will attempt an amicable resolution of the problem and that many cases are, in fact, resolved through negotiated settlements and consent decrees.<sup>134</sup>

The Special Litigation Section of the Civil Rights Division of DOJ, the unit responsible for enforcing CRIPA, does not have nearly enough staff to fulfill its mandate.<sup>135</sup> Made up of twenty-six lawyers (including supervisors), it handles a handful of cases involving a tiny minority of the country's prisons.<sup>136</sup> In all, in fiscal year 1999, the Special Litigation Section opened three new jail investigations; sent findings letters to seven correctional facilities, including two prisons; and settled three cases

involving prisons or jails.<sup>137</sup>

### **The role of civil litigation in enforcing the U.S. Constitution**

Unsurprisingly, given the inadequacies of official enforcement efforts, most attempts to prevent or redress prison abuses are initiated by prisoners. The usual method for challenging abusive practices or conditions is via civil litigation under Section 1983 of Title 42 of the U.S. Code. Because of constitutional rules barring suits under federal law against states as such, individual corrections authorities are generally named as defendants in Section 1983 actions.<sup>138</sup>

Section 1983 is a civil rights statute dating from the post-Civil War era that was revived in the 1960s as a tool for enforcing the U.S. Constitution.<sup>139</sup> A 1964 Supreme Court decision confirmed that prisoners could rely upon Section 1983 in challenging conditions that violated their constitutional rights.<sup>140</sup> All or nearly all of the landmark prison conditions precedents that followed were litigated under the statute.

### ***Prisoners= lack of legal representation***

Because most prisoners are indigent and unable to afford the costs of litigation, they must look either to public interest lawyers who work for free or private lawyers who work on a contingency fee basis to obtain legal representation in suits challenging prison abuses.<sup>141</sup> Both options are exceedingly limited.

A 1996 law greatly reduced the number of public interest lawyers available to litigate on behalf of inmates by barring the federal Legal Services Corporation from funding legal aid organizations that represent prisoners, adding prisoners to a list of forbidden clients (along with undocumented aliens and women seeking abortions).<sup>142</sup> Those public interest organizations that continue to handle prison cases are generally so overburdened that they rarely accept individual suits, focusing instead on reforming overall prison policies via class action litigation.<sup>143</sup> A few states have legal services organizations specifically directed toward inmate lawsuits, such as New York's Prisoners= Legal Services, but these too are normally short-staffed and often suffer chronic funding shortages.<sup>144</sup>

Nor do private lawyers handle many cases involving prison abuses. The difficulties of winning such cases and of obtaining reasonable damages awards, given popular animosity toward prisoners, has meant that the field of prison litigation has never been very lucrative, and thus never very attractive to private lawyers.<sup>145</sup> In addition, the fact of incarceration= especially with so many prisons located in remote rural areas= makes attorney-client communications more difficult and expensive, requiring attorneys to travel long distances to interview their inmate clients. The passage of the PLRA, with its additional disincentives to litigation, has made private lawyers even less willing to represent inmates on a contingency fee basis.

### ***Inmate pro se litigation***

Because of the many obstacles to obtaining legal representation, the vast bulk of prison

conditions litigation arises via complaints filed by prisoners acting pro se, that is, without professional legal counsel.<sup>146</sup> Indigent inmates file many thousands of pro se lawsuits each year.<sup>147</sup> Indeed, much of the case law pertaining to prisoner-on-prisoner sexual abuse is the result of suits initiated by pro se plaintiffs.<sup>148</sup>

Like all persons lacking legal training, pro se inmate plaintiffs face a very difficult time in court. Not only are they unfamiliar with the law, both substantively and procedurally, and often uneducated, but being incarcerated makes it much harder for them to do the factual and legal research necessary to successfully litigate a case. Most inmates even lack access to a typewriter on which to draft their pleadings, instead filing handwritten or scrawled documents with the court.<sup>149</sup> More fortunate prisoners have the aid of do-it-yourself legal manuals that sketch out the legal rules applicable in the prison context and walk the prisoner through the relevant legal procedures.<sup>150</sup> Others obtain assistance from A writ writers or A jailhouse lawyers inmates who have trained themselves in law and procedure. Yet all too many prisoners have no knowledge of the law, no legal assistance, and no possibility of successfully pursuing a legal case, no matter how egregious the abuses they suffer while incarcerated. While a few inmate plaintiffs manage to negotiate monetary settlements with prison authorities or even win their cases, most of them fail in their efforts.<sup>151</sup> Their complaints are often dismissed for procedural errors or other legal shortcomings in the early stages of litigation. Their legal failures, however, may have little to do with the validity of their underlying claims.<sup>152</sup>

Under the U.S. Constitution, prisoners are guaranteed a right of access to the courts. The landmark case of *Bounds v. Smith*, decided in 1977, was an important step toward making this guarantee more than a hollow one: it purported to insure that inmate access to the courts was Adequate, effective, and meaningful.<sup>153</sup> Specifically, it held that prisons must provide inmates with adequate law libraries or adequate assistance from persons trained in the law. Yet more recent judicial decisions in particular the case of *Lewis v. Casey* have greatly eroded the constitutional duty imposed on prison authorities to facilitate prisoners' legal efforts.<sup>154</sup> The passage of the PLRA, designed in part to hinder A frivolous inmate litigation, has placed additional burdens on inmate plaintiffs. Finally, numerous state legislatures have passed similar laws to limit prisoner lawsuits by, for example, requiring inmates to pay filing fees or sanctioning inmates found to have filed frivolous suits.<sup>155</sup> While such laws may discourage unnecessary and groundless litigation, they are equally likely to prevent inmates with valid claims from asserting their rights in court.

### **International Legal Protections**

The overriding weakness of the national legal protections described above the lack of effective enforcement is even more glaring with regard to international legal protections. International human rights law reflects ample concern for prisoners' rights. Even more than U.S. domestic law, international legal norms are directed toward the humane treatment and rehabilitation of prisoners. Yet, no mechanism exists to ensure their enforcement in U.S. prisons and jails, and there are very few official avenues even for monitoring their implementation.

### **Treaties and authoritative guidelines**

The chief international human rights documents binding on the United States clearly affirm that the human rights of incarcerated persons must be respected. The International Covenant on Civil and Political Rights (ICCPR) and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, both ratified by the United States, prohibit torture and cruel, inhuman, or degrading treatment or punishment, without exception or derogation. The ICCPR mandates that A[a]ll persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.<sup>156</sup> It also requires that the Areformation and social rehabilitation@ of prisoners be an Aessential aim@ of imprisonment.<sup>157</sup>

Several additional international documents flesh out the human rights of persons deprived of liberty, providing guidance as to how governments may comply with their obligations under international law. The most comprehensive such guidelines are the United Nations Standard Minimum Rules for the Treatment of Prisoners, adopted by the Economic and Social Council in 1957. Other relevant documents include the Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment, adopted by the General Assembly in 1988, and the Basic Principles for the Treatment of Prisoners, adopted by the General Assembly in 1990. Although these instruments are not treaties, they provide authoritative interpretations as to the practical content of binding treaty standards.<sup>158</sup>

These documents reaffirm the tenet that prisoners retain fundamental human rights. As the most recent of these documents, the Basic Principles, declares:

Except for those limitations that are demonstrably necessitated by the fact of incarceration, all prisoners shall retain the human rights and fundamental freedoms set out in the Universal Declaration of Human Rights, and, where the State concerned is a party, the International Covenant on Economic, Social and Cultural Rights, and the International Covenant on Civil and Political Rights and the Optional Protocol thereto, as well as such other rights as are set out in other United Nations covenants.<sup>159</sup>

Endorsing this philosophy in 1992, the United Nations Human Rights Committee explained that states have Aa positive obligation toward persons who are particularly vulnerable because of their status as persons deprived of liberty@ and stated:

[N]ot only may persons deprived of their liberty not be subjected to [torture or other cruel, inhuman or degrading treatment or punishment], including medical or scientific experimentation, but neither may they be subjected to any hardship or constraint other than that resulting from the deprivation of liberty; respect for the dignity of such persons must be guaranteed under the same conditions as for that of free persons. Persons deprived of their liberty enjoy all the rights set forth in the [ICCPR], subject to the restrictions that are unavoidable in a closed environment.<sup>160</sup>

No international law provisions specifically pertain to rape in prison, but international tribunals and other bodies have established that rape is covered by international prohibitions on torture or cruel, inhuman or degrading treatment.<sup>161</sup> Although there is no general definition of rape in international human rights law, rape has been authoritatively defined as a physical invasion of a sexual nature, committed on a person under circumstances which are coercive.<sup>162</sup> It is important to note, in addition, that sexual abuse that falls short of rape—aggressive sexual touching, etc., that does not involve physical penetration—may also violate international protections against ill-treatment.<sup>163</sup>

Somewhat more complicated is the question of prison authorities' responsibility for preventing prisoner-on-prisoner abuses such as rape. On this point, the language of the Convention against Torture is instructive. In defining torture and cruel, inhuman or degrading treatment or punishment, it includes not only acts committed by public officials, but also acts committed with their acquiescence.<sup>164</sup> That is, international human rights law bars the state from tolerating rape and perpetuating conditions conducive to its occurrence. In the prison context, where most conditions are directly attributable to the state, and where inmates have been deprived of their liberty and the means of self-protection, the prohibition on torture and other ill-treatment translates into an affirmative duty of care. With regard to rape, as with other inter-prisoner abuses, correctional authorities must take reasonable measures to protect inmates from other inmates.<sup>165</sup> Although not every incident of prisoner-on-prisoner rape necessarily proves a failure to fulfill this duty, a pattern of rape indicates that the official response to the problem is inadequate.

### **The prohibition on slavery**

Sexual slavery is a form of slavery recognized as such under international law and prohibited under both treaty law and customary international law.<sup>166</sup> Notably, [t]he crime of slavery does not require government involvement or State action, and constitutes an international crime whether committed by State actors or private individuals.<sup>167</sup>

The 1926 Slavery Convention, to which the United States is a party, describes slavery as the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised, a definition that includes, as modern commentators have noted, sexual access through rape or other forms of sexual violence.<sup>168</sup> The Convention specifically calls on states to impose severe penalties for instances of slavery in order to accomplish the goal of eradicating the abuse in all of its forms.<sup>169</sup> Other international treaties ratified by the United States also bar slavery, including the ICCPR.<sup>170</sup>

In its more extreme cases, prisoner-on-prisoner sexual abuse can constitute a form of sexual slavery. As is described in detail below, some prisoners have been raped on a repeated basis; forced to work for other prisoners by cleaning their cells, washing their clothes, cooking and running errands for them; deprived of almost all independence and autonomy; forced into prostitution, and even bought and sold by other prisoners. Each of these abuses, let alone all of them at once, suggests a situation of



slavery.<sup>171</sup>

### **Barriers to the implementation of international protections**

The United States has long been resistant to subjecting itself to scrutiny under international human rights law, demonstrated both by its failure to ratify numerous key human rights treaties, and by its insistence on attaching limiting reservations, declarations and understandings to any instruments that it does ratify. The limiting provisions that the U.S. attached to its ratification of the ICCPR and the Convention against Torture—which are among the longest and most detailed of any country that has ratified the two instruments—work both substantively, by restricting the scope of the treaties, and procedurally, by restricting their usefulness in court proceedings.<sup>172</sup> In all, they are indicative of U.S. reluctance to allow international protections to make any real impact in broadening or extending the rights granted its citizens.

The primary substantive limitations on prisoners' rights are the U.S. reservation to Article 7 of the ICCPR, by which it declares that the treaty's prohibition on torture and cruel, inhuman or degrading treatment or punishment applies only to the extent that the provision covers acts already barred under the U.S. Constitution, and its similar reservation to Article 16 of the Convention against Torture.<sup>173</sup> In effect, the U.S. government has chosen to nullify these standards to the extent that they grant broader rights than those already guaranteed under the U.S. Constitution. Such reservations are extremely controversial. Indeed, several other governments have explicitly protested them.<sup>174</sup> As these governments have pointed out, reservations like these, which are incompatible with the object and purpose of a treaty, are void.<sup>175</sup> In 1995, the U.N. Human Rights Committee, charged with monitoring the implementation of the ICCPR, also found the U.S. reservation to Article 7 of that instrument to be incompatible with its object and purpose.<sup>176</sup>

Human Rights Watch agrees with this analysis, finding that the U.S. attempt to narrow these treaties' coverage is incompatible with the treaties' goal of preventing a wide range of human rights abuses.<sup>177</sup> We therefore hold the U.S. to the full scope of the prohibition on torture and other ill-treatment contained in the ICCPR and Convention against Torture. Notably, this broad prohibition—which bars abusive *treatment* as well as punishment—lacks the stringent intent requirement that U.S. courts have found in the Eighth Amendment, which bars only abusive punishments. The distinction is of particular relevance in cases of prisoner-on-prisoner sexual assault, where prison authorities are frequently exonerated because they lacked the necessary intent.

In ratifying the ICCPR and the Convention against Torture, the U.S. government did not limit itself to attempting to impose substantive restrictions. Procedurally, the U.S. government attempted to limit the effectiveness of both treaties by declaring that their provisions are non-self-executing. In other words, the government declared that the treaties cannot be directly relied upon in U.S. courts, but require enabling legislation before violations of their provisions can serve as the basis of a lawsuit. To date, no U.S. court that has considered the issue has found either treaty to be self-executing, nor has legislation been passed to fully implement their provisions within the United States.<sup>178</sup> The effect of the

declarations, therefore, has been to greatly diminish the practical usefulness of the treaties in prison litigation.

The Slavery Convention, in contrast, was ratified without any restrictions, and was not declared non-self-executing. As far as Human Rights Watch has been able to ascertain, however, no one has ever filed suit under the Convention for prisoner-on-prisoner rape.

### **International monitoring of conditions**

A number of official U.N. bodies are charged with monitoring the implementation of human rights treaties. The Human Rights Committee and the Committee against Torture monitor states' compliance with the ICCPR and the Convention against Torture, respectively.<sup>179</sup> The Slavery Convention, drafted decades earlier, does not contain a reference to any particular official monitoring body, but responsibility for monitoring the problem of slavery has been generally assigned to the U.N.'s Working Group on Contemporary Forms of Slavery.<sup>180</sup>

Both the ICCPR and the Convention against Torture require states parties to submit periodic compliance reports describing the extent to which the treaty provisions are applied and explaining any obstacles to the full implementation of the instruments. In 1994, the U.S. presented its first report on compliance with the ICCPR, and in 1999—four years after it was due—the U.S. submitted its first report on compliance with the Convention against Torture. Both reports contain detailed descriptions of the constitutional and legal structures existing for the protection of prisoners' rights, and the rules applicable in state and federal prisons, but they included little factual information on conditions and violations. Nor did either document address the question of prisoner-on-prisoner sexual abuse.<sup>181</sup>

The U.N. committees that review these reports do not actually visit countries to conduct factual investigations of conditions. Their assessment of compliance is therefore based on the information provided by governments, supplemented by the reports of nongovernmental groups. Although they do release a short written statement evaluating the government's progress in implementing the human rights treaty at issue, these reports appear to have little impact on human rights conditions in the United States.<sup>182</sup>

For the past several years, a U.N. working group has been meeting annually to hammer out a draft treaty that would establish a U.N. subcommittee authorized to make periodic and ad hoc visits to places of detention in states party to the treaty, including prisons, jails, and police lockups. Based on the information obtained during its visits, the subcommittee would make detailed recommendations to state authorities regarding necessary improvements to their detention facilities. The goal of the subcommittee would be to prevent torture and other ill-treatment. Such a body, which already exists within the European human rights system, might be able to make a practical impact in improving prison conditions in the countries it visits. U.S. membership in such a body if and when it is established—although unlikely, given the U.S. record of avoiding such scrutiny—would be of great benefit.

## CASE HISTORY OF RODNEY HULIN

### Rodney Hulin

*My name is Rodney Hulin and I work at a retirement home here in Beaumont, Texas. I am here today because of my son. He would be here himself if he could . . . But he can't because he died in [an adult prison]. . . [At age seventeen], my son was raped and sodomized by an inmate. The doctor found two tears in his rectum and ordered an HIV test, since up to a third of the 2,200 inmates there were HIV positive. Fearing for his safety, he requested to be placed in protective custody, but his request was denied because, as the warden put it, "Rodney's abuses didn't meet the emergency grievance criteria." For the next several months, my son was repeatedly beaten by the older inmates, forced to perform oral sex, robbed, and beaten again. Each time, his requests for protection were denied by the warden. The abuses, meanwhile, continued. On the night of January 26, 1996, seventy-five days after my son entered Clemens, Rodney attempted suicide by hanging himself in his cell. He could no longer stand to live in continual terror. It was too much for him to handle. He laid in a coma for the next four months until he died.*<sup>183</sup>

In early 1995, Rodney Hulin, Jr., received an eight year sentence for arson. He was sixteen years old but was sentenced to serve his time in adult prison.

On November 13, 1995, Hulin was transferred to the Clemens Unit in Brazoria County, Texas. Older inmates there immediately started to threaten and harass him; within a week he was raped. With a medical examination confirming the rape, Hulin requested protective custody. He went through all the proper channels, trying to get protection, recalled his father, who found out about the rape in a letter from his son. Rodney was very small, probably the smallest person on the unit. He was 5'2" and weighed about 125. A first offender. I can't fathom why they wouldn't help him.<sup>184</sup>

Denied protective custody, Hulin faced continuing sexual abuse. He began violating disciplinary rules in order to protect himself by being placed in segregation. On January 26, while in segregation, he wrote a note saying that he was tired of living. A friend in an adjoining cell passed the note to a guard and warned him that Hulin needed immediate attention. The guard left, not returning for another fifteen minutes. During that time, Hulin hung himself.

After Hulin's death, his parents filed suit against the Texas prison system for failing to protect their son. Among the remedies that they requested were that prison authorities be compelled to institute programs whereby prisoners who are victims of sexual assault while incarcerated are provided with appropriate and necessary counseling and protective custody.<sup>185</sup> The case was settled out of court in 1998, with Texas paying a substantial settlement.<sup>186</sup> No prosecution of Hulin's rapists was ever attempted, although their names were known and witnesses were said to be available.

#### IV. PREDATORS AND VICTIMS

Certain prisoners are targeted for sexual assault the moment they enter a penal facility: their age, looks, sexual preference, and other characteristics mark them as candidates for abuse. A clear example is that of Dee Farmer, a young preoperative transsexual with Aovertly feminine characteristics@ who was placed in regular housing in a maximum-security federal prison.<sup>187</sup> Brutally raped within two weeks of arriving, Farmer sued in federal courtC later bringing the case all the way up to the U.S. Supreme CourtC arguing that as a transsexual she was extremely likely to face sexual assault in prison. But a prisoner does not have to look like a woman to be vulnerable to such abuse. Rather, a broad range of factors are correlated with increased vulnerability to rape, some related to perceived femininity, some entirely unrelated.

Specifically, prisoners fitting any part of the following description are more likely to be targeted: young, small in size, physically weak, white, gay, first offender, possessing Afeminine@ characteristics such as long hair or a high voice; being unassertive, unaggressive, shy, intellectual, not street-smart, or Apassive@, or having been convicted of a sexual offense against a minor. Prisoners with any one of these characteristics typically face an increased risk of sexual abuse, while prisoners with several overlapping characteristics are much more likely than other prisoners to be targeted for abuse.

The characteristics of prison rapists are somewhat less clear and predictable, but certain patterns can nonetheless be discerned. First, although some older inmates commit rape, the perpetrators also tend to be young, if not always as young as their victimsC generally well under thirty-five years old. They are frequently larger or stronger than their victims, and are generally more assertive, physically aggressive, and more at home in the prison environment. They are Astreet smart@C often gang members. They have typically been convicted of more violent crimes than their victims.

The myth of the Ahomosexual predator@ is groundless. Perpetrators of rape typically view themselves as heterosexual and, outside of the prison environment, prefer to engage in heterosexual activity. Although gay inmates are much more likely than other inmates to be victimized in prison, they are not likely to be perpetrators of sexual abuse.

The elements of race and ethnicity have a complex and significant bearing on the problem of prisoner-on-prisoner sexual abuse. As previously discussed, racial and ethnic distinctions are nowhere more salient than they are in prison: all social interaction is refracted through the prism of these group differences. Inter-racial sexual abuse is common only to the extent that it involves white non-Hispanic prisoners being abused by African Americans or Hispanics. In contrast, African American and Hispanic inmates are much less frequently abused by members of other racial or ethnic groups; instead, sexual abuse tends to occur only within these groups.

While all of the above factors are relevant and important, none should not be viewed as controlling.

In the wrong circumstances, it should be emphasized, almost any prisoner may be at risk of sexual abuse. Proper classification and monitoring of vulnerable prisoners should be one aspect of a rape prevention plan, but only one aspect: other prevention policies are equally necessary to stop sexual abuse in prison.

## Age

Young or youthful-looking inmates are at particular risk of rape.<sup>188</sup> The expression *Akid*,<sup>@</sup> frequently used in prison to describe the victim of a coercive sexual relationship, suggests the connection between youth and victimization. Examples such as Rodney Hulin, the seventeen-year-old Texas inmate whose case is described above, illustrate this linkage. Placed in an adult prison and repeatedly raped by older inmates, Hulin committed suicide in 1995.<sup>189</sup>

Human Rights Watch has had only a few direct contacts with juvenile prisoners in the course of research for this report, although it has received numerous reports about their treatment from other prisoners, in addition to hearing from some older prisoners about incidents that occurred when they were minors. In 1998, the mother of an Arkansas prisoner contacted Human Rights Watch to report that her son, a friend of his who was only sixteen, and a third prisoner were all raped in the same cellblock in April of that year.<sup>190</sup> Human Rights Watch wrote to the young prisoner, who was being held in an adult prison, asking about his situation. He responded:

Sorry for taking so long to write, but I have been having a lot of trouble. I'm 16teen. I got into a fight and I got a broke bone in my arm. It don't hurt that bad. Now about the trouble I have been having. I have had 2 people try to rape me . . . . I have tried to go to P.C. [protective custody] but they wouldn't let me.<sup>191</sup>

In his next letter to Human Rights Watch, R.P. explained:

When I was in B pod I had 3 dude=s coming to me that said they was the only thing that was keeping me from getting raped, and they wanted to jack off and look at me. The pod I'm in now I had 2 people come to me and put a ink pen to my neck and tell me that if I didn't let them jack off on me they were going to rape me. I told the officer but they didn't do any thing about it.<sup>192</sup>

R.P. never directly said that he was raped but he has complained about severe and continuing sexual harassment from adult prisoners. Prisoners in other institutions have confirmed that R.P.'s situation is typical, stating that young prisoners like R.P. are viewed as more attractive sexually and more easily abused. A Florida prisoner said:

Mostely young youthful Boy=s are raped because of their youth and tenderness, and smooth skin that in the mind of the one duing the raping he think of the smooth skin and picture a woman . . . . Prisoners even fight each other over a youth without the young man knowing

anything about it to see whom will have the Boy first as his property.<sup>193</sup>

An inmate in Nebraska told Human Rights Watch:

The kids I know of here are kept in the hospital part of the prison until they turn 16. Then they are placed in general population. . . . At age 16, they are just thrown to the wolves, so to speak, in population. I have not heard of one making it more than a week in population without being Alaid.<sup>194</sup>

As described below, small size is another risk factor; small young prisoners are thus especially vulnerable to sexual abuse. A Utah inmate told Human Rights Watch:

[When I was sent to prison,] I was just barely 18 years of age, about 90 pounds. I did nine years from March 1983 to November 1991. In that 9 years I was raped several times. I never told on anyone for it, but did ask the officer for protective custody. But I was just sent to another part of the prison. Than raped again. Sent to another part of the prison. Etc.<sup>195</sup>

Some inmates told Human Rights Watch of hardened convicts who prey on young prisoners. One spoke of Aa guy who has served over 20 years, and he is a tough guy. What he has done for years, is gets the young guys in his cell & gets them high & then chokes them unconscious & proceeds to rape them.<sup>196</sup> Belying the stereotype of the older predator, however, is the much more common story of the young perpetrator of sexual abuse, generally someone between twenty and thirty years old. Although very young prisonersCthose under twentyCare likely to be abused by prisoners who are older than them, most inmates in their twenties who reported abuse to Human Rights Watch were not abused by inmates significantly older than they were.<sup>197</sup>

### **Size, Physical Strength, Attitude, and Propensity toward Violence**

*If a person is timid or shy or as prison inmates term him >Weak,=either mentally or physically, he stands to be a victim of physical and/or sexual assault.<sup>198</sup>*

UnsurprisinglyCgiven that physical force, or at least the implicit threat of physical force, is a common element of rape in prisonCvictims of rape tend to be smaller and weaker than perpetrators. In one extreme example, an inmate who described himself as Aa small person weighing only about 140 pounds@told Human Rights Watch of an attack Aby a man about 6=7@and weighing approximately 280 pounds.<sup>199</sup> Many more inmates described being intimidated or overpowered by larger, stronger perpetrators.

Very small inmates face an especially difficult time in prison. Human Rights Watch interviewed a Texas prisoner who was only five feet tall. He said he was so vulnerable he felt like Aa hunted animal@ most of the time.<sup>200</sup> He claimed to have been sexually abused on countless occasions.

Strong, physically imposing inmates are safer from sexual abuse. An inmate's size and strength is particularly important in terms of fending off unwanted advances from cellmates, a fairly common problem. Yet size and strength alone, inmates emphasized, are never an absolute guarantee against abuse. *I don't care how big and bad you are, if you've got five dudes up against you, you're in trouble,* one prisoner pointed out.<sup>201</sup>

More important than sheer physical characteristics, in many inmates' view, is *heart*—the courage to fight and not give up even when losing and a willingness to resort to violence when provoked. An inmate has to prove that he will stand up for himself against intimidation. A strong, aggressive attitude is just as necessary as physical strength. Inmates perceived as timid, fearful, *passive,* or not aggressive are likely to be targeted for victimization, whereas inmates who have gained the respect of their fellows are likely to be safe. As one inmate explained:

Smaller, weaker, meeker individuals are usually targets. Meeker individuals tend to *act gay*—is how it's described here and in turn invites assault through the aggressors' mind. A new inmate needs to come into the system ready to fight and with a strong mind.<sup>202</sup>

It is thus unsurprising that mentally ill or retarded prisoners, whose numbers behind bars have increased dramatically in recent years, are at particular risk of abuse.<sup>203</sup> An Indiana prisoner suffering from schizophrenia told Human Rights Watch that he was constantly being coerced into unwanted sex. Describing his situation, he said:

So one day I goes to the day room going to get my medication there was a big Black guy both of them call me to the back of the day room. they were punking me out. I didn't want to fight them they made me call them daddy, made kept repeating it. . . . these things keeps happening to me. . . . these officers and these inmate they take advantage of the weak give them coffee, cigarette to make them do things for them. . . . there was a White guy that took advantages of me in prison at another facility. . . . I don't know my rights or about the law, so I'm hit everytime I go to prison.<sup>204</sup>

By all reports, perpetrators tend to be stronger, more physically aggressive, and more assertive than their victims. Even more importantly, they tend to be better established in the inmate hierarchy. Often they are gang members with a network of inmate allies. This is, of course, particularly true with gang rapes, but it is also true with individual acts of abuse. A less established prisoner may be intimidated into submitting to sex with a powerful inmate or gang member out of fear that, were he to refuse, a more violent gang attack would ensue.

As this might suggest, newly incarcerated first offenders are especially vulnerable to sexual abuse. Lacking allies, unfamiliar with the unwritten code of inmate rules, and likely to feel somewhat traumatized by the new and threatening environment, they are easy prey for experienced inmates. *It's a sink or swim situation,* said one prisoner who was beaten and raped soon after entering prison. *I*

sunk.<sup>205</sup> He explained:

My first mistake was not hanging out with the ignorant tough guys, and staying in my cell most of the time: they take that as a sign of weakness. I wasn't ready for the clique action. The prison was a gladiator farm back then; I kept getting into fights and finally I couldn't do it any more. I was getting beaten up every day for a month.

Describing the dangers of this initial entry period, an Arkansas prisoner told Human Rights Watch:

When a new inmate enters an open barracks prison it triggers a sort of competition among the convicts as to who will seduce and subjugate that new arrival. Subjugation is mental, physical, financial, and sexual. Every new arrival is a potential victim. Unless the new arrival is strong, ugly, and efficient at violence, they are subject to get seduced, coerced, or raped . . . Psychosocially, emotionally, and physically the most dangerous and traumatic place I can conceive of is the open barracks prison when first viewed by a new inmate.<sup>206</sup>

A Minnesota prisoner gave a similar account of the reception awaiting new inmates:

When an inmate comes in for the first time and doesn't know anyone. The clicks and gangs. Watch him like Wolves readying there attacks. They see if he spends time alone, who he eats with. Its like the Wild Kingdom. Then they start playing with him, checking the new guy out. (They call him fresh meat.)<sup>207</sup>

## Sexual Preference

Numerous judicial decisions, newspaper and magazine stories, and even some scholarly articles describe the threat of predatory homosexuals in prison and the problem of homosexual rape.<sup>208</sup> Yet prisoners who self-identify as gay are much more likely than other prisoners to be *targeted* for rape, rather than being themselves the perpetrators of it.<sup>209</sup>

To some extent, the talk of predatory homosexual inmates simply reflects a lack of semantic clarity. Since prisoner-on-prisoner rape is by definition homosexual, in that it involves persons of the same sex, its perpetrators are unthinkingly labeled predatory homosexuals. This terminology is deceptive, however, in that it ignores the fact that the vast majority of prison rapists do not view themselves as gay. Rather, most such rapists view themselves as heterosexuals and see the victim as substituting for a woman. From this perspective the crucial point is not that they are having sex with a man; instead it is that they are the aggressor, as opposed to the victim—the person doing the penetration, as opposed to the one being penetrated. Indeed, if they see anyone as gay, it is the victim (even where the victim's clear sexual preference is for heterosexual activity).

An Illinois prisoner explained inmates' views on the question:



The theory is that you are not gay or bisexual as long as YOU yourself do not allow another man to stick his penis into your mouth or anal passage. If you do the sticking, you can still consider yourself to be a macho man/heterosexual, according to their theory. This is a pretty universal/widespread theory.<sup>210</sup>

Equal and voluntary gay relationships do not fit comfortably within this dichotomy. Although outsiders may perceive male prisons as a bastion of gay sexuality, the reality is quite different. Gay relationships typical of regular society are rare in prison, and usually kept secret. Indeed, many gay inmates—even those who are openly gay outside of prison—carefully hide their sexual identities while incarcerated. They do so because inmates who are perceived as gay by other inmates face a very high risk of sexual abuse. Human Rights Watch has received reports of rape from numerous gay inmates, all of whom agree that their sexual preferences contributed to the likelihood of victimization.<sup>211</sup>

Some prisoners have told Human Rights Watch that inmate views on homosexuality are gradually changing, with a lessening of prejudice against gays as changing societal mores begin to permeate prison culture. Even these prisoners, however, acknowledge that gay inmates are still severely stigmatized—they just believe that their treatment has lately been improving.

Gay inmates with stereotypically Afeminine characteristics are especially vulnerable to sexual abuse. As one such inmate described:

I have long Blond hair and I weigh about 144 lbs. I am a free-world homosexual that looks and acts like a female . . . . In 1992 I came to this Unit and was put into population. There was so many gangs and violence that I had know choice but to hook up with someone that could make them give me a little respect . . . . All open Homosexuals are preyed upon and if they don't choose up they get chosen.<sup>212</sup>

Unsurprisingly, transsexual prisoners like Dee Farmer, whose case went to the Supreme Court, face unrelenting sexual harassment unless another inmate is protecting them. Such inmates nearly always have an inmate Ahusband, @someone powerful enough in the inmate hierarchy to keep other inmates away.

## **Race and Ethnicity**

Past studies have documented the prevalence of black on white sexual aggression in prison.<sup>213</sup> These findings are further confirmed by Human Rights Watch's own research. Overall, our correspondence and interviews with white, black, and Hispanic inmates convince us that white inmates are disproportionately targeted for abuse.<sup>214</sup> Although many whites reported being raped by white inmates, black on white abuse appears to be more common. To a much lesser extent, non-Hispanic whites also reported being victimized by Hispanic inmates.

Other than sexual abuse of white inmates by African Americans, and, less frequently, Hispanics,

interracial and interethnic sexual abuse appears to be much less common than sexual abuse committed by persons of one race or ethnicity against members of that same group. In other words, African Americans typically face sexual abuse at the hands of other African Americans, and Hispanics at the hands of other Hispanics. Some inmates told Human Rights Watch that this pattern reflected an inmate rule, one that was strictly enforced: Aonly a black can turn out [rape] a black, and only a chicano can turn out a chicano.@<sup>215</sup> Breaking this rule by sexually abusing someone of another race or ethnicity, with the exception of a white inmate, could lead to racial or ethnic unrest, as other members of the victim=s group would retaliate against the perpetrator=s group. A Texas inmate explained, for example: AThe MexicansCindeed all latinos, nobody outside their race can xcheck= one without permission from the town that, that person is from. If a black dude were to check a mexican w/out such permission & the mexican stays down & fights back, a riot will take place.@<sup>216</sup>

The causes of black on white sexual abuse in prison have been much analyzed. Some commentators have attributed it to the norms of a violent black subculture, the result of social conditioning that encourages aggressiveness and the use of force.<sup>217</sup> Others have viewed it as a form of revenge for white dominance of blacks in outside society.<sup>218</sup> Viewing rape as a hate crime rather than one primarily motivated by sexual urges, they believe that sexually abused white inmates are essentially convenient surrogates for whites generally. Elaborating on this theory, one commentator surmised that A[i]n raping a white inmate, the black aggressor may in some measure be assaulting the white guard on the catwalk.@<sup>219</sup>

Some inmates, both black and white, told Human Rights Watch that whites were generally perceived as weaker and thus more vulnerable to sexual abuse. An African American prisoner, describing the situation of incarcerated whites, said:

When individuals come to prison, they know that the first thing that they will have to do is fight. Now there are individuals that are from a certain race that the majority of them are not physically equip to fight. So they are the majority that are force to engage in sexual acts.<sup>220</sup>

Another African American inmate, while generally agreeing with the idea of whites as easy victims, gave a more politically-oriented explanation for the problem of black on white sexual abuse:

Before I continue, let me explain that I consider myself to be speaking from mainly a black perspective. The reason I say that is not to be racist, but to emphasize that on the main, blacks, whites, hispanics, etc. . . . have a different outlook on prison rape from a convict viewpoint. Most [blacks] feel that the legal system is fundamentally racist and officers are the most visible symbol of a corrupt institution & with good reason . . . . [B]lacks know whites often associate crime with black people. They see themselves as being used as scapegoats . . . . So is it any wonder that when a white man comes to prison, that blacks see him as a target. Stereotypes are prevalent amongst blacks also

that cause bad thinking. The belief that all or most white men are effete or gay is very prevalent, & that whites are cowards who have to have 5 or 6 more to take down one dude . . . . Whites are prey and even a punk will be supported if he beats up a white dude.

### **Criminal History**

Prior studies have found that the crimes for which victims of rape are incarcerated are generally less serious and less violent than those for which the perpetrators of rape are incarcerated.<sup>221</sup> Although findings by Human Rights Watch on this issue are tentativeCespecially because many victims of sexual abuse have no idea what crime their rapists was convicted ofCthey tend to support this argument. A few of the victims who provided information to us were convicted of serious, violent crimes such as murder, but a striking proportion of them were nonviolent felons, many of them convicted of crimes such as burglary, drug offenses, passing bad checks, car theft, etc. Of the minority of victims who were aware of the criminal history of the perpetrator of abuse, many reported serious and violent crimes. This general pattern is consistent, of course, with the idea that perpetrators of rape tend to be more violent people than victims, both inside and outside of prison.

With one exception, no specific crime seems to be associated with either perpetrators or victims. The exception is sexual abuse of a minor. Although the vast majority of victims of prison rape are incarcerated for other crimes, it is apparent that inmates convicted of sex crimes against minors, if their crimes become known to other inmates, are much more apt to be targeted for sexual abuse in prison. A number of inmates convicted of such offenses reported being sexually assaulted by other prisoners; all stated that the nature of their crime inspired the assault or increased its likelihood. AIt took about seven months before my crime became known,@one such prisoner explained. AThen everyone came down on me. They beat me with mop handles and broom sticks. They shoved a mop handle up my ass and left me like that.@<sup>222</sup>

This man was transferred to another institution but other inmates who knew of his crime were transferred with him. Some three weeks after the transfer, his cellmate woke him up at 2:30 a.m. and raped him, bashing him in the back of the head with a combination lock. AThe guy told me, >I will teach you what a baby raper is.=@

Explaining the targeting of prisoners convicted of sexually abusing minors, another inmate said:

Inmates confined for sexual offenses, especially those against juvenile victims, are at the bottom of the pecking order and consequentially most often victimized. Because of their crime, the general population justifies using their weakness by labling rape Ajust punishment@ for their crime. Sexual offenders are the number one target group for prisoner rape.<sup>223</sup>

### **Relationship between Victim and Perpetrator**

Most sexual abuse in prison is not between total strangers: the victim and at least one of the

perpetrators usually have some prior awareness of each other, however cursory. In some instances, victims have described a long period of harassment that escalates in stages, from leering to sexually aggressive comments to threats, culminating in a physical assault. A Texas inmate described such a scenario to Human Rights Watch:

[My cellmate] was younger, stronger than I and larger. He introduced himself as a bi-sexual. And was for two weeks Atouchie-feelie.@ I had to scream/yell at him to stop. The officers here 1. Ignored my complaints. 2. Asked me if I was his lover. 3. Did nothing. He became more difficult to deal with and started to threaten me. Finally one day he attacked me.<sup>224</sup>

In other instances, the progression is much more rapid: an inmate who makes an ugly comment at lunch may commit rape in the evening.

Of the various forms of sexual abuse, it is violent or forcible rapes, or rapes under threat of violence, that are most likely to involve strangers or inmates with a very slight acquaintanceship. More subtly coercive sexual relationships, in contrast, take time to develop. The perpetrator may initially appear to be a friend, even an apparent protector, but will take advantage of his acquaintance with the victim to intimidate and coerce him into sexual contact.

One relationship that presents a clear danger of sexual abuse, both of the overtly violent and of the coercive sorts, is that of cellmates. With two-man cells becoming more common in American prisons, due to overcrowding and space constraints, inmates are often thrown into intimate living situations with persons whom, according to the factors described above, present them with a high risk of sexual abuse. Prison officials, preoccupied with other priorities, pay inadequate attention to the question of prisoners' compatibility when assigning cell spaces. While they may take care to avoid housing members of different gangs together, or inmates known to be enemies, their attention usually stops there. Prisoners are frequently double-celled with much larger, stronger, tougher inmates, even with prisoners who have a known history of sexual abuse. Unsurprisingly, a large number of inmates report having been raped by their cellmates.

The alarming frequency of such reports indicates to Human Rights Watch that prison officials should take considerably more care in matching cell mates, and that, as a general rule, double-celling should be avoided.

## CASE HISTORIES OF L.O. AND P.E.

### L.O.

*Patient was referred from the Clemens Unit to Jester IV Crisis Management following 2 episodes of cutting his arm with reported intent to kill himself. Patient claimed it was due to a rape 2 months ago while on the [A] Unit. He reported he could not stop thinking about the assault . . . . Testing generally supports a clinical depression with psychological damage consistent with a post traumatic process.*<sup>225</sup>

*I observed that there were maybe (5) inmates of European descent out of about 150 inmates housed on cell block M. The remaining cell block population was comprised of African-Americans and Hispanics . . . . Daily, I was called Apunk ass white boy and was told Ayou are going to ride (pay for protection) white boy . . . . On May 10, 1995, inmate S.E., who is an African-American, was placed in my assigned cell . . . . Shortly afterwards, inmate S.E. made numerous offensive derogatory comments against individuals of European descent, and threatened to brutally assault me unless I surrendered my sleeping bunk . . . . Inmate S.E. stated that he would kill me if I called for help, or attempted to resist him in any manner . . . . I was then raped/sexually assaulted by inmate S.E.*<sup>226</sup>

At age twenty-two, L.O. received a six-year sentence for possession of cocaine. In April 1995, he was sent to a notoriously dangerous prison in Texas.

L.O. was one of a handful of white prisoners on the prison wing to which he was assigned, and he was immediately subject to racial harassment, threats, and violent assaults. Fearful for his life, he later told Human Rights Watch that he purposely broke prison disciplinary rules in order to be placed on special cell restrictions, which left him locked in his cell twenty-three hours a day and therefore more protected. In May, however, another inmate, S.R., was assigned to share his cell. S.R., who was African American, told L.O. that he was a member of the Crips and displayed identifying tattoos. He immediately began to threaten L.O., demanding that L.O. give up his personal belongings and that he submit to sex. While S.R. was in the shower, L.O. alerted a guard to his situation, stating that he was afraid for his safety and did not want to be housed with S.R. The guard dismissed his fears.

For three days, S.R. threatened L.O., and L.O. repeatedly informed guards of his fears for his safety. On the third night, S.R. again demanded that L.O. submit to sex. When L.O. refused, S.R. yanked him from the top bunk where he had been resting. L.O. fell to the floor and S.R. began punching and kicking him. After a struggle, L.O. was knocked unconscious. When he came to, S.R. was holding a shank (homemade knife) to his throat. S.R. warned L.O. that he would die if he yelled. He then anally raped L.O..

Early the next morning, when guards were delivering the breakfast trays, L.O., who was visibly injured, demanded that he be taken from the cell and brought to the prison infirmary. For an entire day, the guards ignored his plea. L.O. was not examined by prison medical staff until 9:00 a.m. the following morning.

L.O. was transferred to another prison but still felt extremely insecure and unsafe. Two months later, he attempted suicide by cutting his wrists. He was transferred to the prison psychiatric unit for treatment, where he stayed for the remainder of his sentence.

In August 1996, L.O. filed a complaint with the local district attorney, asking that his rape be investigated and the perpetrator whose name he provided be criminally prosecuted. No such prosecution was ever instituted, and L.O.'s follow up letters received no response. He was released to a half-way house in 1997, and has since left the prison system.

## **P.E.**

P.E. is a young heterosexual male, as he emphasizes, *Attracted to females only.* While incarcerated in Florida, P.E. said, he submitted to unwanted sex with another inmate, not because he violently attacked, but because he felt tricked into it. He wrote Human Rights Watch:

This letter is about rape but not as defined by law, *Athe forceful taking,* it is more towards *Apsychological manipulation.* It happened to me . . . I made the excellent victim. I'm white, 27, non-violent, loner, who receives little help from the outside ie family, and low self-esteem. Other inmates saw me as a target. I'm young, good-looking, have some feminine mannerisms and naive. Some wanted to be my *Afriend* to *Alook out for me.* But they just wanted to use me. One inmate would stake claim to you by becoming your *Afriend* hanging out with you all the time. In reality, he was saying *Adon't touch he's mine.* Its a gradually process that you become dependent on this person whether its financial, physical or emotional. But sooner or later there comes a time when he wants a return in his investment, a sexual return . . . You *don't* want to ruin your *Afriendship* by saying no to something you *don't* want to do because then you *don't* get the *Asupport* financial or emotional from your friend. So you do what he wants, I did, and that's how you get hooked.<sup>227</sup>

P.E. entered Florida prison in mid-1997, scared, unsure of himself, and unfamiliar with prison ways. Soon after he was assigned to a housing unit, an older prison befriended him: offering P.E. food, cigarettes, and other items, and *Atalking to me in a friendly way.* P.E. felt protected and safe in the company of the other inmate. As time went on, the friendship shifted toward sex. The other inmate began by masturbating himself in P.E.'s presence, later wanting P.E. to fellate him. P.E. was bewildered and uncomfortable, but he did not feel able to refuse. The relationship lasted about six months before P.E. could muster the courage to break it off. Since then, he has had to fight off several advances from other inmates who have *Aheard rumors,* spread by the first inmate, *Athat I am a homosexual.*

## V. RAPE SCENARIOS

A gang of inmates violently attacks a lone prisoner in the shower, sticking a knife to his throat and ripping his clothes off. "Don't make a sound or you're dead," they warn him. Then they rape him, one after another.

This is what people outside of prison tend to picture when they think of prisoner-on-prisoner rape. The basic scenario is not inaccurate, Human Rights Watch has found; it occurs in prisons around the country. Rape in prison can be almost unimaginably vicious and brutal. Gang assaults are not uncommon, and victims may be left beaten, bloody and, in the most extreme cases, dead.

Yet overtly violent rapes are only the most visible and dramatic form of sexual abuse behind bars. Many victims of prison rape have never had a knife to their throat. They may have never been explicitly threatened. But they have nonetheless engaged in sexual acts against their will, believing that they had no choice.

These coercive forms of sexual abuse are much more common than violent gang rapes and, for prison authorities, much easier to ignore. Although Human Rights Watch received many reports of forcible sexual attacks, we also heard numerous accounts of abuse based on more subtle forms of coercion and intimidation. Prisoners, including those who had been forcibly raped, all agree that the threat of violence, or even just the implicit threat of violence, is a more common factor in sexual abuse than is actual violence. As one explained:

From my point of view, rape takes place every day. A prisoner that is engaging in sexual acts, not by force, is still a victim of rape because I know that deep inside this prisoner do not want to do the things that he is doing but he thinks that it is the only way that he can survive.<sup>228</sup>

In attempting to delineate some of the more common scenarios of prison sexual abuse, the following chapter describes both overtly violent forms of abuse and forms in which the violence is submerged or hidden. Key to many of the latter situations are what prisoners term "manipulation techniques" or "mind games": tricks used by predatory inmates to trap those they consider vulnerable.

In a letter to Human Rights Watch, a Florida prisoner set out a rough typology of the various forms of prisoner-on-prisoner sexual abuse. He explained:

Let me say I believe there are different levels or kinds of rape in prison. First, there is what I will refer to as "Bodily Force Rape" for lack of a better term. This is the kind of assault where one or more individuals attack another individual and by beating and subduing him force sex either anal or oral on him.

Second there is what I'll call Rape By Threat. An example of this would be,

when an individual tells a weaker individual that in order to avoid being assaulted by the individual who's speaking he must submit to his demand for sex.

Third and by far the most common is what I'll call using a person's fears of his situation to convince him to submit to sex . . . . Among inmates there is a debate whether this is in fact rape at all. In my opinion it is in fact rape. Let me give you an example of what happens and you decide.

Example: A new inmate arrives. He has no funds for the things he needs such as soap, junk food, and drugs (there are a great deal of drugs in prisons). Someone befriends him and tells him if he needs anything come to him. The new arrival is some times aware, but most times not, that what he is receiving has a 100% interest rate that is compounded weekly. When the N.A. is in deep enough the Afriend will tell him he can cover some of his debt by submitting to sex. This has been the Afriend's objective from the beginning. To maneuver the N.A. into a corner where he's vulnerable. Is this rape? I think it is.<sup>229</sup>

To answer this prisoner's question can apparently consensual sex be deemed rape and, if so, under what circumstances is it rape it is necessary to explore the peculiar dynamics of incarceration.

### **Consent and Coercion in Prison**

*[A]ll choices and relationships are so constrained and limited in the unfree world of the prison that what is normally meant by such terms as Afree or Avoluntary does not apply.*

*C James Gilligan, M.D., former director of mental health of the Massachusetts prison system<sup>230</sup>*

The existence of freely given consent or, conversely, the absence of coercion, is a critical factor in distinguishing sexual abuse from mere sex.<sup>231</sup> But in the context of imprisonment, much more so than in the outside world, the concepts of consent and coercion are extremely slippery. Prisons and jails are inherently coercive environments. Inmates enjoy little autonomy and little possibility of free choice, making it difficult to ascertain whether an inmate's consent to anything is freely given.<sup>232</sup> Distinguishing coerced sex from consensual sex can be especially difficult.

Human Rights Watch has previously addressed the issue of inmates' consent to sex in the specific case of women inmates' sexual relations with correctional officers. In light of officers' enormous authority over inmates a power imbalance that eviscerates traditional notions of consent we concluded that custodial sexual contact should be deemed a criminal act even in the absence of overt or implied coercion.<sup>233</sup>

Prisoner-on-prisoner sexual contact might first appear to pose very different questions than custodial sexual contact as, formally at least, prisoners are not supposed to be able to exercise power



over each other. The reality, however, is that in most prisons, even those where correctional authorities make a reasonable effort to maintain control of their charges, an inmate hierarchy exists by which certain prisoners enjoy a great deal of power over their fellows and other prisoners are exposed to exploitation and abuse. This power imbalance is of course much more marked in prisons where the authorities have ceded effective control to the inmate population, an all too common occurrence. Indeed, where the inmates run the prison—a phrase Human Rights Watch heard on several occasions—some of the most abusive relationships take place with little or no need for threats or other overtly coercive acts. For some prisoners, the atmosphere of fear and intimidation is so overwhelming that they acquiesce in their sexual exploitation without putting up any obvious resistance. J.D., incarcerated in Colorado, explained how this happened to him:

I came to prison in April, 1991. I'd never been to prison before. I basically feared for my life . . . . Eventually, I ended up with a roommate who took advantage of my situation. He made me feel unprotected somewhat. But, at the same time, he let me know he could quite capably beat me up, if he wanted. One night, after we were all locked down for the night, he told me he could help me overcome my sexual inhibitions, if I would let him. He told me he was bisexual. I knew he was quite sexually active, so to speak, as he had female pornography in the room as well as masturbating frequently to it. But, I was surprised he would come on to me. However, I felt very much in danger if I did *not* give in to him. I was very scared. I ended up letting him penetrate me anally. After this, I would feign sleep at night when he'd come in. But, there were several more times he forced me to perform sexually.<sup>234</sup>

Viewed from outside, the sexual relationship between J.D. and his cellmate would likely have appeared consensual. Indeed, in instances where the victim makes little apparent effort to escape the abuse, both prisoners and prison authorities often fall into the trap of viewing nonconsensual sexual activity as consensual, ignoring the larger context in which the activity takes place.<sup>235</sup> Consent, however, assumes the existence of choice. As will be described in more detail below, where prisoners feel unprotected and know in advance that their escape routes are closed, a narrow focus on consent is misguided. In other words, the relevant inquiry in evaluating sexual activity in prison is not simply *Did the inmate consent to sex?* but also *Did the inmate have the power to refuse unwanted sex?*

It is important to note, moreover, that it is these apparently *unconsensual* sexual acts that are least likely ever to come to the attention of correctional authorities. J.D., like most inmates in his position, never told the authorities about his situation.

### **Violent or Forcible Assaults**

Inmate victims of rape have told Human Rights Watch of sexual assaults that ended in concussions, broken bones, deep wounds, and other serious injuries. A small number of inmates, such as Randy Payne, have been killed during sexually-motivated attacks.

Payne, a twenty-three year old white inmate who had been sentenced to fifteen years for having

sex with a minor, was attacked by a group of about twenty other inmates within a week of arriving at a maximum-security Texas prison in August 1994. The inmates had demanded sex and money, but Payne had refused. He was beaten for almost two hours; guards later said they had not noticed anything until they found his bloody body in the dayroom. He died of head injuries a few days later.<sup>236</sup>

Another Texas inmate, showing deep scars on his head, neck, and chest, told Human Rights Watch that the prisoner who inflicted the wounds had raped him eight separate times from July through November 1995. The first time M.R. was raped—which felt like having a tree limb shoved up into me—he told the prison chaplain about it, and the chaplain had him write out a statement for the facility's Internal Affairs department. The Internal Affairs investigator brought both the victim and the perpetrator into a room together and asked them what had happened. Although M.R. was terrified to speak of the incident in front of the other inmate, he told his story, while the perpetrator claimed the sex was consensual. After both of them had spoken, the investigator told them that lovers' quarrels were not of interest to Internal Affairs, sending them both back to their cells. The guy shoved me into his house and raped me again, M.R. later said. It was a lot more violent this time.<sup>237</sup>

M.R. spent several months trying to escape the rapist. He filed grievances over the first couple of rapes that were returned saying the sexual assaults never occurred. Once a guard stumbled upon a rape in progress; he took M.R. out of the rapist's cell, but the incident was never investigated. M.R. was transferred to another wing but the rapist managed to sneak over there, banging on the bars to get M.R.'s attention. He told me he loved me. He said if he couldn't have me nobody could. M.R., who is heterosexual, tried to tell the other prisoner that he had no interest in sex with any man, but the other prisoner dismissed this.

On December 31, the rapist again showed up on M.R.'s wing, threatening to kill M.R. with a combination lock, which he showed M.R. I was in the dayroom. I remember eating a piece of cornbread and the next thing I knew I woke up in the hospital, M.R. recalled.<sup>238</sup> M.R. suffered a broken neck, jaw, left collarbone, and finger; a dislocated left shoulder; two major concussions and lacerations to his scalp that caused bleeding on the brain. A room full of prisoners witnessed the rapist nearly kill M.R. and, after he was done beating him, rape him in the middle of the dayroom. The rapist hit M.R. so hard with the lock that when M.R. regained consciousness he could read the word Master—the lockmaker's—on his temple. Four years later, a Human Rights Watch researcher could still see the round impression of the lock on the right side of his forehead. The rapist was never criminally prosecuted, despite M.R.'s efforts to press charges. From what M.R. heard from other inmates, the rapist only received fifteen days' segregation as punishment for the near murder.

Extreme violence as an element of rape is even more common with gang assaults—assaults involving more than one perpetrator. A number of inmates told Human Rights Watch of being badly beaten during such assaults, especially in instances where the victim initially resisted the attack. A Georgia prisoner related, for example: Two violent inmates with a record of violence threatened to sexually assault me and take my store goods. I tried to fight back, which resulted in my jaw being

broke in 3 places.<sup>239</sup>

Other prisoners described assaults involving, in many instances, more than two perpetrators, and sometimes even up to six or eight of them. The perpetrators typically take turns holding the victim down on the bed or on the floor, or holding a weapon to him, while the others sexually assault him. Sometimes violence is not used, as it is easy enough for several prisoners to overpower a single victim simply by holding him in place. Violent language and degrading insults are common, as well as threats to kill the victim if he tells the authorities.

Forcible sexual assaults can occur in almost any area where inmates are found, but the most common place for such assaults to take place seems to be inmates' sleeping areas: either group dormitories or cells. Showers, bathrooms, and other areas offering a degree of privacy are also used. It happens anywhere there's a little nook or cranny," explained a prisoner who was violently raped by three inmates in a washroom.<sup>240</sup>

### Coerced Sexual Abuse

*At night the guards locked themselves in a cage and slept while inmates sexually and physically assaulted others. . . . I at times was asked for sexual favors in order to maintain my security. I was never forced into sex physically, but mentally I wasn't capable of saying no, as I feared for my life.*<sup>241</sup>

*[T]he acceptance of a cigarette may have a hidden price attached.*<sup>242</sup>

D.A., a young Texas inmate, was dozing off in his bed not long after being transferred to a new prison. "The next thing I know, there's someone in my cell," D.A. told a Human Rights Watch representative two years later. "He gave me an ultimatum: he said you're going to let me fuck you, or my homeboys will stab you."<sup>243</sup> D.A., who believed the aggressor was a member of the Crips gang, submitted to anal sex. His story is typical of many known to Human Rights Watch. Crimes committed not through violence but through the threat of violence.

In many instances, moreover, the threat of violence is never even articulated by the perpetrator of sexual abuse, although it is likely to be implicit in his interaction with the victim. Instead of overt threats, manipulation is used. The victim's acute awareness of his own vulnerability is exploited by the perpetrator, who coerces the victim into unwanted yet unforced sexual contact.

A number of prisoners described typical coercion scenarios in detail to Human Rights Watch. The following are a couple of representative descriptions:

- C [One technique to force a prisoner into sex is that] one of the bad guys will set up a power play. This is accomplished by him having two or three of his friends stop down on the prisoner of his choice in a strong manner as if to fight or beat up this prisoner. This usually puts the chosen

prisoner in great fear of those type guys. The prisoner that set up this will be close by when this goes down. His roll is to step in just before the act gets physical. He defends the chosen prisoner by taking on the would be offenders. This works to gain the respect and trust of the chosen prisoner. After this encounter the chosen prisoner is encouraged to hang out with his new friend. This is repeated once or twice more to convince the chosen one of the sincere loyalties of the prisoner that set all this up . . . . They become very close, the chosen one feels compelled to show his thanks by giving at first monetary favors to his protector and it progress to the point where this guy that set up the attacks on him will not accept just the money. He starts to insist on the chosen one to give him sexual favors . . . . The fear of him, the chosen one, is that if he do not have this one Protector the rest of the guys will be back after him. After all it is better to have one person that you give sexual favors than it would be to have to be forced to do the act by two or more prisoners at the same time.<sup>244</sup>

- C What is more prevalent at TCIP . . . is best called **Acoercion**.@ I suppose you have an idea what these engagements entail. The victim is usually tricked into owing a favor. Here this is usually drugs, with the perpetrator seeming to be, to the victim, a really swell fellow and all. Soon, however, the victim is asked to repay all those joints or licks of dope**C**right away. Of course he has no drugs or money, and the only alternative is sexual favors. Once a prisoner is **A**turned-out,@ it's pretty much a done deal. I guess a good many victims just want to do their time and not risk any trouble, so they submit. . . . The coercion-type abuses continue because of their covert nature. From the way such attacks manifest, it can seem to others, administrators and prisoners, that the victims are just homosexual to begin with. Why else would they allow such a thing to happen, people might ask.<sup>245</sup>

These descriptions illustrate the two basic scenarios**C**both of which involve debt**C**repeated again and again by inmates. The first is that an inmate acts as a protector to a vulnerable prisoner, scaring off (or pretending to scare off) other predators. Sometimes the protector begins by doing this for free, asking nothing in return, but eventually he will ask to be rewarded sexually. If the victim refuses, prisoners have explained, then the protector himself will threaten the victim overtly, but such overt threats are frequently unnecessary. When the victim is convinced that rape is inevitable, he will often accede under little direct pressure, hoping simply to lessen the physical violence of the act.

The second basic scenario is for the perpetrator to provide food, drugs, or other desirable items to a potential victim, allowing the victim to build up a debt. At some point, the perpetrator insists that the debt be repaid via sexual favors. Again, if the victim hesitates, the perpetrator may make it terrifyingly clear to him that refusal is not an option, but this last step is often unnecessary.

Constant sexual harassment**C**sexualized comments, whistling, groping**C**is often another part of the process by which the victim is pressured into submitting to unwanted sex. G.H., who entered prison when he was seventeen and was almost immediately coerced into sexual contact, said that while he was being processed through the initial orientation phase, still in shock over being incarcerated, **A**inmates

would whistle at me and tell me I'm a convict's dream >girl= come true.<sup>246</sup> L.B., a small, slim first offender convicted of burglary, remembered entering a new prison in 1996: As soon as I walked on the wing, the catcalls started.<sup>247</sup> Describing the effect of such harassment on the victim, another prisoner said, The dominant party [will] first let the intended victim know that he wants to have sex with him, then begin to wear the victim down by constantly leering at him in ways that let the victim know what's on his mind. Psychologically the victim eventually begins to believe he is a homosexual and no longer resists.<sup>248</sup>

Seasoned inmates are usually familiar with tactics such as these, and are more skilled at managing them. As G.H. exemplifies, it is new, incoming inmates who are most vulnerable. As one prisoner put it: Most of prison is a mind game. People get taken advantage of when they're green and don't know what to expect.<sup>249</sup>

### Continuing Sexual Abuse

*You will be lebled as a bisexual, or homosexual, pretty boy, gay, little girl, queen. Once there has been penetration or forced oral sex, the jacket is on his back, as being a punk, sissy, queer, etc.*<sup>250</sup>

Once subject to sexual abuse, whether violently or through coercion, a prisoner may easily become trapped into a sexually subordinate role. Prisoners refer to the initial rape as **Turning out** the victim, and the suggestion of transformation is telling. Through the act of rape, the victim is redefined as an object of sexual abuse. He has been proven to be weak, vulnerable, **Afemale**, in the eyes of other inmates. Regaining his **Amanhood** and the respect of other prisoners can be nearly impossible.

In a cruel twist, the fact of victimization may be viewed as justifying itself, given the common inmate belief that a real man would never submit to rape. According to one extreme variant of this view, the rapist merely recognizes and acts upon the victim's **Alatent homosexual tendencies**. As one Texas inmate put it, many inmates are convinced that:

[D]udes that are turned out were like that in the first place & just wanted an excuse to come out of the closet . . . [P]unks were born like that and it doesn't matter because if it did they'd fight and/or resist.<sup>251</sup>

Even prisoners who do not share this view often believe that, once the rape has taken place, the victim becomes a homosexual. Inmates speak of other raped prisoners as being **Aconverted to women** or **Amade into homosexuals**, as if one's sexuality might be irretrievably altered by the fact of rape.<sup>252</sup> That some victims of rape appear to accept the role imposed on them by failing to report the abuse or even by adopting stereotypically feminine attributes strengthens prisoners' adherence to this view.

Stigmatized as a **Apunk** or **Aturn out**, the victim of rape will almost inevitably be the target of continuing sexual exploitation, both from the initial perpetrator and, unless the perpetrator **Aprotects** him, from other inmates as well. **AOnce** someone is violated sexually and there is no consequences on

the perpetrators, that person who was violated then becomes a mark or marked,<sup>253</sup> an Indiana prisoner told Human Rights Watch. That means he's fair game.<sup>253</sup> His victimization is likely to be public knowledge, and his reputation will follow him to other housing areas, if he is moved, and even to other prisons. As another inmate explained: AWord travels so Fast in prison. The Convict grape vine is Large. You cant run or hide.<sup>254</sup>

With other prisoners being moved around the prison system, and inmates communicating via other means as well, transfer to a new prison unit is no guarantee of escaping one's reputation. It may, however, provide a respite from abuse and, in some cases, a new start—especially if the new unit is less volatile and violent than the previous one. W.M. is a Texas prisoner who was raped soon after entering prison and became a turn out,<sup>255</sup> sexually exploited by a long series of inmates. Finally, after years of abuse, he went renegade,<sup>256</sup> as he put it. Transferred to a new prison unit, he saw it as an opportunity to make a break with the past. Heavier, stronger, and far more street smart than he was when he entered prison, he physically attacked any inmate who approached him sexually.

Explaining how he succeeded in escaping further abuse, W.M. said:

You asked if I thought someone who is raped is necessarily going to be targeted for more abuse. The answer is an emphatic yes. Anyone who's had the pipe laid to them is going to be tried constantly throughout his stay in prison. I've got scars where I've been stabbed & cut up, I'll show you when I see you. There is a price you pay when you break away and any prison boy/gal knows it. The trick [to successfully avoiding continuing sexual abuse] is to stay low-key after you succeed & deny, deny, deny, if it's ever brought up and if there is any question or any doubt in anyone's mind, you do your best to kill the person that brought it up. Blood clears a lot of questions from people's heads.

But the years before W.M. made his break are more representative of the options typically open to victims of rape. After being raped by his cellmate, he was forced to A be with someone<sup>257</sup> a protector who kept other inmates away. When that person was transferred to different unit, W.M. was passed on to another man. AI usually spent about three or four months with each one. I was with one guy for ten months.<sup>255</sup> Inmates told Human Rights Watch that such an outcome is considered normal: AThe result of turning out= a kid is that the kid usually finds a dad=Can older, strong inmate to take care of him and to protect him from any future attacks.<sup>256</sup> Notably, a similar phenomenon of Aprotective pairing<sup>257</sup> has been documented in the case of women abducted and sexually abused during armed conflict.

Numerous victims told Human Rights Watch similar stories of becoming the A kid<sup>257</sup> or the A wife<sup>257</sup> of their rapist. Some, in even worse predicaments, were forced to sexually service an entire gang for a period of time.

Just as with the initial acts of coerced sex described above, this type of continuing sexual abuse is likely to be viewed as consensual by others, including prison staff. When sexual contact is no longer violent, it may be thought that the inmate is consenting to it. Yet even if a prisoner initially fights back against his attackers, he will at some point resign himself to his situation and stop fighting it. *A*Rarely does somebody resist after the 5th or 6th time,@explained W.M. *A*That's why they say its by choice not force most of the time. That's a lie though, because mental force is just as effective if not more.@<sup>258</sup>

The only escape from abuse, except for the small minority of inmates who succeed in rehabilitating their reputation, is release from prison or transfer to a protective custody or safekeeping unit. *C*Areas designed to be havens for vulnerable inmates. Yet as will be discussed in chapter VII, it can be very difficult to convince prison authorities to authorize such a transfer. Moreover, protective custody units tend to be extremely restrictive, even punitive, in their conditions.

Even more worrisome, the very fact of trying to escape to protective custody by reporting sexual abuse puts an inmate at greater risk. As is explained at greater length below, the general stigma against *A*snitching@*C*reporting other inmates= wrongdoing *C*discourages victims from informing prison officials of their abuse. In cases of prisoner-on-prisoner rape, the perpetrators often reinforce the tacit prohibition on snitching by specifically threatening violent retaliation if the victim says a word to officials about what happened to him.

## Slavery

*A convicted felon is one whom the law in its humanity punishes by confinement in the penitentiary instead of death . . . . For the time being, during his term of service in the penitentiary, he is a slave of penal servitude to the State.*

*C Virginia Supreme Court in Ruffin v. Commonwealth, 62 Va. 790, 796 (1871).*

*[A]n offender should not and must not, be sentenced to a term of enslavement by gangs, rape and abuse by predatory inmates.*

*C Federal district court opinion in Ruiz v. Texas (1999).*

*[An inmate] claimed me as his property and I didnt dispute it. I became obedient, telling myself at least I was surviving . . . . He publicly humiliated and degraded me, making sure all the inmates and gaurds knew that I was a queen and his property. Within a week he was pimping me out to other inmates at \$3.00 a man. This state of existence continued for two months until he sold me for \$25.00 to another black male who purchased me to be his wife.*

*C E.S., Michigan inmate, October 4, 1996.*

Prisoners unable to escape a situation of sexual abuse may find themselves becoming another inmate's *A*property.@ The word is commonly used in prison to refer to sexually subordinate inmates, and it is no exaggeration. Victims of prison rape, in the most extreme cases, are literally the slaves of the

perpetrators. Forced to satisfy another man's sexual appetites whenever he demands, they may also be responsible for washing his clothes, cooking his food, massaging his back, cleaning his cell, and myriad other chores. They are frequently rented out for sex, sold, or even auctioned off to other inmates, replicating the financial aspects of traditional slavery. Their most basic choices, like how to dress and whom to talk to, may be controlled by the person who owns them. They may even be renamed as women.<sup>259</sup> Like all forms of slavery, these situations are among the most degrading and dehumanizing experiences a person can undergo.

J.D., a white inmate in Texas who admits that he cannot fight real good, told Human Rights Watch that he was violently raped by his cellmate, a heavy, muscular man, in 1993. From that day on, he said, I was classified as a homosexual and was sold from one inmate to the next.<sup>260</sup> Although he informed prison staff that he had been raped and was transferred to another part of the prison, the white inmates in his new housing area immediately sold him to a black inmate known as Blue Top. Blue Top used J.D. sexually, while also renting his sexual services to other black inmates. Besides being forced to perform all types of sexual acts, J.D. had to defer to Blue Top in every other way. Under Blue Top's dominion, no task was too menial or too degrading for J.D. to perform. After two and a half months of this abuse, J.D. was finally transferred to safekeeping.

Another Texas inmate explained the financial dimension that is evident in J.D.'s treatment. According to him, when they do turn out a guy they actually own them, every penny they get it goes to there man. You can buy a kid for 20 or 30 dollars on most wings!! They sell them like cattle.<sup>261</sup> A third Texas inmate made a similar analogy: It would amaze you (as it did me) to see human beings bought & sold like shoes.<sup>262</sup>

The testimony of another Texas inmate, describing the rules imposed on him by the prisoner who became his man, suggests the extent to which these victimized inmates are forced to obey their abusers, sexually and otherwise:

You will clean the house, he said, have my clothes clean and when Im ready to get my Afreak no arguments or there will be a punishment! I will, he said, let my homeboys have you or Ill just sale you off. Do we have an understanding? With fear, misery, and confusion inside me . . . I said yes.<sup>263</sup>

Six Texas inmates, separately and independently, gave Human Rights Watch firsthand accounts of being forced into this type of sexual slavery, having even been sold or rented out to other inmates. Numerous other Texas prisoners confirmed that the practice of sexual slavery, including the buying and selling of inmates, is commonplace in the system's more dangerous prison units. Although Texas, judging from the information received by Human Rights Watch, has the worst record in this respect, we also collected personal testimonies from inmates in Illinois, Michigan, California and Arkansas who have survived situations of sexual slavery.



Prisoners elsewhere frequently spoke of the phenomenon, suggesting that it is not limited to the states mentioned above. An Indiana prisoner, for example, told Human Rights Watch:

most time when a young boy is turned out by a gang, the sole purpose of that is first to fuck the boy especially young boys, once they finish with the boy they are sold to another prisoner for profit, it's big business selling boys in prisons and gang members control this business.<sup>264</sup>

When slavery and involuntary servitude were officially abolished in the United States by the Thirteenth Amendment to the U.S. constitution, an exception was made for "Aa punishment for crime whereof the party shall have been duly convicted."<sup>265</sup> At that time, prisoners were considered the "Aslaves of the state," outside the purview of judicially-enforced constitutional protections. More than a hundred years later, prisoners' legal status has improved. Yet, a different, though equally horrifying, form of slavery continues in U.S. prisons, and the fundamental rights of the victims of these abuses continue to be ignored.

### **Sex, Violence and Power**

*Rape in prison is rarely a sexual act, but one of violence, politics, and an acting out of power roles.*

C Journalist and prisoner Wilbert Rideau, in "The Sexual Jungle"<sup>266</sup>

*Of course rape is a crime of hatred. I'm ugly as a mud fence, why would W.R. want to have sex with me?*

C A Texas inmate, October 8, 1998.

Locked in an all male society, lacking other sexual outlets, prisoners might be assumed to commit rape as a means of sexual release. Yet the cruelty and degradation so intimately connected to rape in prison undermines this facile explanation, suggesting that inmates' real motivations for committing rape are more complicated. Theorists of rape, whose research has mostly focused on women victims, have posited that rape is as much a crime of violence as it is one of sex.<sup>267</sup> Prisoners' views and experiences, as conveyed to Human Rights Watch, tend to confirm this notion.

The question of whether prisoner-on-prisoner rape is primarily a crime of violence or of sex is not an academic one, since knowledge of rape's causes is obviously of benefit in crafting effective prevention strategies. Were the causes of rape found to be rooted in sexual deprivation per se, then conjugal visits, for example, might be recommended as the primary means of attacking the problem.<sup>268</sup>

But prison experts, academic commentators, and prisoners themselves generally concur that sexual deprivation is not the main source of the phenomenon.<sup>269</sup> Instead, in the prison context, where power and hierarchy are key, rape is an expression of power. It unequivocally establishes the aggressor's dominance, affirming his masculinity, strength, and control at the expense of the victim's.

People in prison are deprived of sex, but perhaps even more fundamentally they are deprived of almost all choice in or power over their lives. The most basic decisions affecting them—what to eat, when to get up, where and with whom to live—are outside of their control. As Louisiana prisoner and writer Wilbert Rideau has pointed out, “The psychological pain involved in such an existence creates an urgent and terrible need for reinforcement of [the prisoner’s] sense of manhood and personal worth.”<sup>270</sup> One means of doing so is by establishing absolute power over another prisoner via rape.

Numerous prisoners confirmed this portrayal of rape as a means of expressing power in a situation of powerlessness. Explained a Virginia inmate: “In my view the perpetrator of rape is an angry man. He lacks power and decides to steal it from others through assault.” Interestingly, this same inmate drew a correlation between the imposition of a more oppressive prison regime, in which officials treat prisoners unfairly, and the likelihood of a sexual assault. He explained that he had noticed that “the more oppressive the system the higher the incidents of assaultive behavior in general . . . . Fair and objective treatment seems to create a less-assaultive environment.”<sup>271</sup> Indeed, if prisoners’ quest for dominance over others is to some extent a consequence of their lack of power in every other area of life, then it stands to reason that a harsher and more arbitrary prison regime would exacerbate the tendency.

A Nebraska inmate put the matter succinctly: “Power, control, revenge, seem to top the reasons for rape.”<sup>272</sup> Others elaborated at length on the factors that contribute to the problem:

Most cons are emotionally alienated from themselves. The peer pressure not to be seen as “weak” pertaining to any gentler emotion, is astronomically intense . . . . In prison, to gain a simple hug which is emotionally soothing without being threatening, the dominator can only accept from the dominated. [Also] a prisoner experiences profound powerlessness of self over one’s life and future. One of the most basic ways to resume an illusion of empowerment of self is to establish power over another at ground zero: life and sexual gratification.<sup>273</sup>

In prison, as elsewhere, money is a form of power. The financial incentives for rape are another aggravating factor, particularly in prison systems in which prisoners have no means of making money except by extorting it from other prisoners or by pimping them out.

The obvious disdain prisoners share regarding “punks” and “turnouts”—inmates subject to sexual abuse—further strengthens the view of rape as a crime of violence and power, not of sexual passion. Indeed, “punk” is a frequently used insult in prison, denoting everything that prisoners do not want to be. A Utah inmate told Human Rights Watch: “The word ‘punk’ in this facility is used loosely, and is a term used to down-size someone, as well as to identify an actual ‘punk’ meaning a kid or guy who is used and exploited sexually because he is too timid or weak to make a stand.”<sup>274</sup> As explained above, a raped inmate is considered degraded and humiliated; rape, in other words, is a means of

degradation.

Still, to think that there is a strict dichotomy between rape as a sexual act and rape as a violent assertion of power may be somewhat misguided. Rapists are, in the most obvious ways, sexually stimulated by what they are doing. A[N]o matter how one characterizes it, i.e., >control=, >violence=, >rage= etc., @ suggested a Colorado inmate, Ait is sexuality.@<sup>275</sup> The fact that the victim of rape is injured and degraded may itself be a source of sexual arousal to the rapist. Daniel Lockwood, an expert on prison rape, has posited that sexual aggression in prison can be traced to men's sexist attitudes toward women, which, in prison, translate into a bias against men placed in female roles.<sup>276</sup> The fact that stereotypically feminine characteristics are so despised in male prisoners may reflect a more general contempt of women, not just men who are considered to be like women. Although misogyny would appear to be an unlikely cause of male-on-male rape, it may be an ingredient in the volatile mix that results in sexual abuse in prison.

## CASE HISTORIES OF S.H. AND M.R.

### S.H.

*I was rented out for sexual favors, and a lot of the guys who rented me are not rapists, or assaulted as children, or any other stereotypical model. They just wanted some sexual satisfaction, even though they knew I was not deriving pleasure from it, and was there only because I was forced to . . . I was with the Valluco (Valley) crowd, so I was only passed around to them for free. D. Town Hispanics had to pay. They were charged \$3 for a blow-job, \$5 for anal sex . . . I am not effeminate, nor am I even homosexual.<sup>277</sup>*

With two prior nonviolent felonies, S.H. received a seventy-five year sentence for burglary in 1994. He was twenty-four years old.

S.H. was sent to a minimum-security wing of a rural Texas prison. Having been incarcerated before, he was fairly confident he could manage the situation. Nearly immediately, however, he misunderstood a guard's order and received a minor disciplinary ticket, resulting in his transfer to the North Side of the facility, a more dangerous area.

S.H. is white, and whites were a small minority where he was sent. Among the nearly 190 inmates on a wing, less than twenty were white. In Texas prisons, then as now, racial tensions on the cell blocks were extreme. Whom prisoners socialized with, whom they would defend in a fight, whom they would victimize—even where prisoners sat—was primarily determined by race. All of the dayroom benches, for example, were assigned by race, the bulk of them going to black inmates. Whites, as the numerical minority, were seen as easy targets for extortion and sexual exploitation.

A large proportion of white inmates were forced by other inmates to ride, that is, to pay protection: either money or sex or both. White inmates who refused to ride, and who would therefore fight to protect themselves, were known as woods. In his first letter to Human Rights Watch, S.H. explained the choices facing an incoming inmate such as himself:

A White guy comes onto the block. He stands there, someone will usually direct him to the back wall of the dayroom. If he's lucky, one of the woods will go talk to him, let him know that if he fights, they'll back him up after the first couple, then he won't have any problems. This is called checking. If he is scared (who's not) and doesn't want to fight, he has to get a man.<sup>278</sup>

At 5'11" and 150 pounds, S.H. has a medium build, but is admittedly not a great fighter.<sup>279</sup> Nonetheless when he arrived on the North Side he was determined to stand up for himself. Soon after his transfer there, he had to fight two Hispanic prisoners, one after the other. Although the two inmates beat him, S.H. proved himself sufficiently that the woods—the whites who did not pay

protection. Caccepted him among their group. He was allowed to sit at the Awood bench, @ a privilege extended only to white inmates who passed the Achecking @ stage.

After a few weeks, however, S.H. had a falling out with P.E., the leader of the woods, an Aryan Circle gang member. At the same time, a shortage of bench space led the Hispanic inmates, who were feeling crowded by the whites, to challenge the whites to give them more space. The Hispanic inmates proposed to Arecheck @ all of the white inmate C to fight the whites again C until they gained more bench space. P.E., as the leader of the white inmates, came up with a different solution. On March 31, P.E. Asacrificed @ S.H. to the Hispanics:

He told me and two others that we were banished from the group and could no longer sit on the bench. When I returned to the wing, four or five Hispanic guys surrounded me. I said, AOK, I=ll ride. @ I knew I didnt have a chance. I tried to get out that night by telling the sergeant; he told me Abe a man, go take care of your business. @<sup>280</sup>

A few days later, on April 6, S.H. filed an Aemergency @ grievance requesting that he be placed in solitary confinement. Soon after, he told a classification counselor that he was considered the Aproperty @ of a Hispanic gang, and a few days later the counselor sent a sergeant into the wing to investigate. S.H. told the sergeant what was happening and the sergeant responded that he was lying, then called him a Awimp @ for not fighting the gang. The sergeant wanted to call out one of the Hispanic inmates to question him about S.H.'s allegations, an action that S.H. opposed, as he felt it would put his life in danger by branding him as a snitch. The sergeant said that this was the way he conducted investigations, and if S.H. disagreed with his methods, he could ask for the investigation to be dropped. Feeling he had no choice, S.H. dropped the investigation. His written request stated that he was withdrawing his protection request because the Hispanic inmate in question would Aknow exactly who told what and I, not any guard, will be the one subjected to physical abuse over it. @<sup>281</sup>

As a prisoner who was riding, S.H. was Acontrolled @ by a Hispanic prisoner known as Batuco, a member of the Vallucos. S.H. was indigent so Batuco made S.H. do his housework: clean his cell, wash his clothes, etc. S.H. also had to make deliveries for Batuco: to break prison rules by sneaking over to other wings and bringing packages to other inmates. The second time he had to make a delivery, he was sent over to the cell of a large Hispanic prisoner who greeted him with the words: AYou know what you're here for. @ When S.H. said no, the inmate forced him down on the bunk and anally raped him.

AAfterwards, I was numb from shock . . . I stayed in my cell for twenty-four hours, I was so upset, @ S.H. later remembered.<sup>282</sup> He was too ashamed, too shocked, and too scared to report the rape and try to obtain a medical examination. Batuco let a week go by and then started forcing S.H. into giving him oral sex. He threatened to stab S.H. if S.H. reported it.

Near the end of April, the prison held a reclassification hearing. S.H. claims that when he told

the presiding officer that he was being forced to ride, the officer responded, "People like you make me sick. You rob and steal and then come down here whining, expecting us to protect you. Be a man, for Crissakes."<sup>283</sup> His request for safekeeping status was denied.

In the meantime, Batuco was making S.H. service the rest of the Vallucos, some five or six other guys, and even "renting" him out to other Hispanics on occasion. Even though Batuco was in charge of S.H., he and S.H. argued frequently. Batuco wanted S.H. to "play like I was a woman (shave my body hair, etc. . . .)," but S.H. refused, and was beaten for it.<sup>284</sup> Other Hispanic inmates accused Batuco of not being able to control S.H.. So Batuco, under pressure from his friends, "sold" S.H. to S.H.'s cellmate for \$10. "\$10 was really cheap," S.H. explained. "But he wanted to get rid of me. It usually cost \$30 to get out of a ride."<sup>285</sup>

S.H.'s cellmate promised him that the debt would not entail any sex. Instead, S.H. washed his cellmate's clothes, as well as the clothes of other prisoners, in order to pay his cellmate back the \$10. A few weeks later, however, his cellmate demanded sex from S.H.. S.H. had an African American friend, Oz, who was a member of the Nation of Islam, which frowned upon sexual abuse. Oz stood up for S.H. and paid his cellmate some of the money he was owed.

At every opportunity, S.H. was requesting transfer to a safer environment, in particular, the safekeeping wing. A few days before a classification hearing on one of these requests, S.H. gave a classification counselor a list containing the names of people who had sexually abused him. At the hearing, on June 23, S.H. described his situation in detail. Nonetheless, safekeeping status was denied him: a factor cited in the denial was the absence of physical proof of assault.

In August, S.H. was transferred to another wing where he "rode" with a Hispanic inmate from Houston, named DeLeon. DeLeon forced him to submit to anal sex almost immediately. In general, he exercised a high degree of control over S.H.. As S.H. described it:

I'd ask DeLeon if I could go sit with Becker, a friend of mine who was riding with the blacks. You know when you ride with someone, they control whatever you do, even who you talk to. You have to ask before you can go talk to someone. If you're riding, in essence, you're owned.<sup>286</sup>

That same month, one of S.H.'s friends wrote S.H.'s mother and informed her that her son was being raped. Out of shame and embarrassment, S.H. had not spoken to her of that part of his situation, although he had told her of his desperate need for protection. S.H.'s mother had already written to the warden asking that her son be placed on safekeeping; this time she wrote explaining that her son had been raped. She received a letter in mid-August from the warden that declared, in a blatant misstatement:

We have no reports of your son being raped . . . . Your son has not reported any

incident to security, or to medical staff. I am sorry you received inadequate information to cause you to worry about your son.<sup>287</sup>

During that same period S.H. told another guard about his situation, providing him with the names of several other prisoners who he said would corroborate his account of sexual abuse.<sup>288</sup> A few days later, a sergeant visited S.H., purportedly to investigate the allegations. As S.H. described it in a lawsuit filed later:

[The sergeant] refused to interview the inmate witnesses and told plaintiff that he was lying about being sexually abused. After plaintiff vehemently protested that he was being truthful, [the sergeant] made comments that plaintiff **A**must be gay@ for **A**letting them make you suck dick.@<sup>289</sup>

In October, DeLeon transferred out to minimum custody. DeLeon's cellmate, called Clutch, inherited S.H. from DeLeon. Within two days, Clutch made S.H. give oral sex to a gang leader named Kilo. On January 1, 1995, Clutch forced S.H. to submit to anal sex. S.H. reported the assault and in the middle of the night was taken from his cell and brought to the infirmary, where a rape kit was administered. Yet, because he had not been physically beaten and there were no tears in his anus, the rape kit showed **A**no objective evidence of sexual assault.@

At that point, in January 1995, S.H. was finally placed in safekeeping, where the atmosphere was much less violent and racially-charged; the sexual abuse stopped. He had been victimized for over nine months.

Throughout this period of constant sexual abuse S.H. had filed numerous grievances with the prison authorities, desperately seeking removal to a safer, more controlled environment. His file for 1994 shows grievances dated April 5 (denied May 24), June 22 (denied July 11, appealed July 14, denied August 18, appealed August 20, denied September 8), August 29 (denied September 20, appealed September 28, denied November 18, appealed November 23, denied December 14), September 26 (denied October 25, appealed October 29, denied November 22, appealed December 6, denied December 20), and November 4 (denied December 6, appealed December 14, denied January 25, 1995, appealed January 29, denied March 27). He had also told numerous guards and prison psychologists what was happening to him, as well as members of prison classification committees.

S.H.'s grievances directly and unambiguously explained his problems. His June 22 grievance stated plainly: **A**I have been, and am repeatedly being sexually abused. I have written detailed statements telling Who, What, When, Where, How of the situations. No one has taken any type of action.@<sup>290</sup> The warden's denial, a textbook example of bureaucratic obfuscation, stated: **A**In most cases, this procedure provides you with fifteen days before a grievance must be filed in this office. This time period should provide you with ample time to seek and attempt informal resolution to your

issue . . . . No further action will be taken at this level.<sup>291</sup> Appealing the denial of the grievance to the deputy director of with the state prison system, S.H. begged: **AI** only want to be safe from sexual abuse. Please help me!<sup>292</sup> This plea too was ignored.

Once in safekeeping, S.H. spoke with prison investigators, including Internal Affairs staff, about bringing criminal charges against Clutch. He twice wrote the Henderson County district attorney, in March and May 1995, demanding that rape charges be instituted. No charges were ever brought.

Throughout 1994 and 1995, S.H. sent letters to lawyers and legal service organization attempting to find a pro bono (volunteer) lawyer to intercede on his behalf. Acting as his own legal counsel, he finally filed suit in federal court in July 1996. His handwritten complaint contained a ninety-two paragraph fact section, setting out dates, names, and incidents in precise detail. He later filed five affidavits with the court in which other prisoners corroborated his claims.<sup>292</sup>

The federal district court hearing the case first ruled that all of S.H.'s claims relating to events prior to July 12, 1994, were barred by a two-year statute of limitations. As for incidents after that date, the court dismissed the case in May 1997, placing stress on the fact that in April 1994 S.H. had requested that the initial investigation be dropped. (As described above, that request was the result of S.H.'s very real fear that the sergeant's investigative techniques put his life in danger.) S.H. fought the dismissal of his case at every step, requesting the district court to reconsider its judgment, and then appealing the court's decision. In mid 1999, the U.S. Court of Appeals for the Fifth Circuit denied S.H.'s appeal. Its brief, unpublished opinion, which failed to deal with the substance of any of S.H.'s claims, wholly upheld the district court's decision. In a letter to Human Rights Watch describing the appellate ruling, S.H. said: **AI** can't convey to you how upset I am over this. It would be a lot different if I lost at trial . . . . I am devastated.<sup>293</sup>

Looking through S.H.'s files—the countless grievances, letters, affidavits, legal briefs and other materials, only some of which have been described here—Cone wonders what more a prisoner could possibly do, within the system, to save himself from sexual abuse.

## **M.R.**

*Since I've been in prison I have endured more misery than most people could handle . . . . [A]ll open homosexuals are preyed upon and if they don't choose up they get chosen.*<sup>294</sup>

M.R., a gay white inmate, entered the Arkansas prison system in early 1992, at age twenty-one. He has, in his words, **A**feminine characteristics,<sup>295</sup> including long blond hair, that mean that in the prison environment he is **A**considered to be female.<sup>295</sup>

M.R. was placed in the general prison population when he arrived at Cummins Unit in 1992. Faced with the gangs and violence of the unit, he knew he had to find someone to protect him. Under



pressure, he chose someone to hook up with. The relationship only lasted a few days, however, since M.R. was considered such an attractive target that his new guardian did not feel able to protect both of them.

According to M.R., a Black guy paid an officer 2 cartons of Kools to write me up so I could be moved to his block with him.<sup>296</sup> M.R. claims that such guard involvement is not unusual. In prison, among both guards and inmates, money will buy anything and I do mean anything.<sup>297</sup> Almost immediately, the other prisoner sexually assaulted M.R., anally raping him in his cell. M.R. escaped the abuse by requesting protective custody.

Because of a severe shortage of space in the protective custody block, however, M.R. was bounced back into general population several times. Although he was transferred into other prisons, each place he went he faced harassment and sexual abuse.

In March 1995, over his strong objections, he was transferred from a protective custody block at Cummins Unit into the general prison population. As he had expected, he immediately became the target of harassment by other prisoners. One inmate in particular appeared to be after him, repeatedly threatening him with violence. Toward the end of the month M.R. had a classification hearing on his request to return to protective custody. The hearing officers demanded that he tell them exactly who was threatening him, with the warden at the hearing reportedly telling him: How do you expect us to investigate this matter if you don't tell us some names? M.R. was afraid to give any names, fearing that members of the committee would interview the inmates, and that the other inmates would know that he snitched. Despite his fear, he did name the inmates involved. Nonetheless, he was denied protective custody.

Back in general population, M.R. was forced to live with and face these same inmates (who the Classification Committee interviewed) who all called [him] a snitch and threatened [him] with bodily harm.<sup>298</sup> Other prisoners told him bluntly, you snitched on the wrong motherfuckers.<sup>299</sup> The next month, the prisoner who had previously threatened him took action. As M.R. described it:

I had no choice but to submit to being Inmate B's prison wife. Out of fear for my life, I submitted to sucking his dick, being fucked in my ass, and performing other duties as a woman, such as making his bed. In all reality, I was his slave, as the Officials of the Arkansas Department of Corrections under the color of law did absolutely nothing.<sup>300</sup>

After a week of this, M.R. managed to get transferred to another cellblock, but there other prisoners continued to harass him. A month later, he was transferred back into the same cellblock with inmate B; the sexual abuse resumed. On June 3:

I was at Inmate B's bed and he forced me to kiss him and suck his dick. While doing this, he had his hand on my head with his fingers entwined in my hair forcing my head up

and down and trying to choke me with his dick. The entire time Inmate B. was telling me "suck it bitch." At this time, CO-1 M. observed this through the outside window of the barracks. He observed this until Inmate B. ejected sperm in my mouth, then he walked in the barracks and told us both to go to the Captain's Office.

Both M.R. and inmate B. were given disciplinary violations for a sexual offense, with M.R. receiving fifteen days of punitive isolation and the loss of privileges. He was later assigned back to protective custody.

## VI. BODY AND SOUL: THE PHYSICAL AND PSYCHOLOGICAL INJURY OF PRISON RAPE

*[Plaintiff L.T. is] a skinny, white, passive, non-violent, short timer, who is blind in his right eye. . . . On 1-25-97, at approximately 2:00 A.M., plaintiff went into the bathroom of seven (7) barracks and inmate C. Williams followed after. Plaintiff used the urinal and as he turned, inmate Williams pulled a shank (glass knife) from a book and threatened to poke plaintiff's other eye out and kill him if he did not let Williams fuck the plaintiff. Williams then told plaintiff to go to the rear corner of the bathroom, pulled a small bottle of lotion from his pocket and made plaintiff rub it on his penis. Williams then put the shank to plaintiff's throat and said Turn around and pull those pants down, which plaintiff did for fear of his life if he did not. Williams then raped (penile penetration to anus) the plaintiff with the shank at plaintiff's throat, pressing it and saying Shut up bitch when plaintiff began to moan and wanting to scream from the pain. After climaxing and wiping himself off, Williams said If you ever tell anyone, I or one of my gang members will kill you, in here or in the world. . . . Plaintiff suffered great physical pain, although short lived, and continues to suffer severe emotional and psychological mental anguish as a result of being raped . . . . Plaintiff has taken, and was just re-prescribed, anti-depressant medications which do not seem to help. Plaintiff believes this incident alone . . . has caused a nervous disorder, his inability to concentrate and a worsened memory, and the lack of energy or desire to do the simplest of things, inexpressable humiliation, raging anger, etc. etc.; all of which plaintiff does not see any drugs, counseling or monetary relief from the defendants being able to cure.<sup>301</sup>*

L.T.'s experience of rape was violent, painful, and humiliating. The rape itself was physically agonizing, the resulting rectal soreness lasted several days, and L.T.'s intense fear of contracting HIV persisted for months. But worst of all, for him, was the devastating psychological impact of the attack. Racked by continuing nightmares, depression, and thoughts of suicide, L.T. believed that the rape had irretrievably damaged his psyche. Formerly a friendly person, he found himself retreating from social contact, becoming angry, suspicious, and reclusive. Despite the mental trauma he suffered, he received no counseling while incarcerated, nor did he succeed in obtaining legal assistance in his subsequent court challenge to the abuse. Without having secured psychological treatment or any measure of accountability for the violent injustice he had endured, L.T. was paroled from prison in late 1998. His case is all too typical.

Some inmates contract HIV as a result of prison rape; for them, the consequences of the assault may be deadly. Other inmates are killed or seriously injured during the violent physical attacks that sometimes accompany rape. But all inmates who are raped suffer psychological harm.

Although invisible, the psychological effects of prison rape are serious and enduring: they raise important questions regarding the failure of prison authorities to take effective measures to prevent such abuse. The physical brutality of rape is deplorable. Nonetheless, the physical impact of such abuse is often less devastating, and far less permanent, than its psychological impact. Indeed, many instances of non-consensual sex occur through coercion, threats or deception: they may not leave physical marks, but deep and permanent psychological injury.

### **Physical Effects and the Threat of HIV Transmission**

The physical effects of a sexual assault obviously vary according to its circumstances: whether, for example, the incident involved a violent attack, whether there was anal penetration, and whether a lubricant was used. As described in chapter V, a forcible rape that occurs as part of a larger physical assault may be extremely violent. Prisoners with whom Human Rights Watch is in contact have suffered rape-related injuries ranging from broken bones to lost teeth to concussions to bloody gashes requiring dozens of stitches. A few, like former Texas inmate Randy Payne, were killed during sexual assaults.

Another Texas inmate who tried on several occasions to fight off sexual assaults told Human Rights Watch that he could map out on his body the consequences of resisting his abusers:

To give you an idea what I mean . . . I now have scars where I've been gutted, under the right side of my chest below my heart, where my neck was cut open and under my left arm. That's not the many minor cuts and wounds I can't include in this letter because of lack of time & space.<sup>302</sup>

The medical records of several other prisoners with whom Human Rights Watch has been in contact portray a similar picture of physical savagery. And, in itself, forced anal penetration may cause intense pain, abrasions, soreness, bleeding, even, in some cases, tearing of the anus or transmission of the HIV virus.

### **The Threat of HIV Transmission**

Transmission of HIV, the virus which causes AIDS, is a serious threat to victims of prison rape. In 1994, an Illinois inmate, Michael Blucker, claimed that he contracted HIV from being repeatedly raped at the Menard Correctional Center. He tested HIV-negative after being sent to Menard in May 1993, but was HIV-positive when tested again the following April. Blucker filed suit against the Illinois Department of Correction, prompting Rep. Cal Skinner, Jr., an Illinois state representative, to introduce legislation to protect prisoners against rape.<sup>303</sup> As Representative Skinner warned, victims of prison rape face the possibility of an unadjudicated death sentence, subverting the intent of the criminal justice system.

Several other prisoners with whom Human Rights Watch is in contact state that they have contracted HIV through forced sexual intercourse in prison. K.S., a prisoner in Arkansas, was repeatedly raped between January and December 1991 by more than twenty different inmates, one of

whom, he believes, transmitted the HIV virus to him. K.S. had tested negative for HIV upon entry to the prison system, but in September 1991 he tested positive. During the relevant time period, K.S. made numerous requests for assistance to prison officials, describing the sexual abuse and asking for protection.

K.S. brought suit in federal court against the prison officials who failed to protect him.<sup>304</sup> At trial, the warden testified that it was the prisoners' own responsibility to fight off sexual abuse. That prisoners had to let the others understand that [they] are not going to put up with that.<sup>305</sup> Despite ample evidence that K.S. had been left to fend for himself against numerous stronger inmates, the jury decided in favor of one official while the court ruled in favor of two others as a matter of law. The court's decision was later reversed on appeal,<sup>306</sup> and as of this writing K.S.'s lawsuit is still pending. K.S. remains incarcerated and is being treated for HIV. As for his attackers, K.S. reports, two got punitive isolation time. The rest are still raping other inmates.<sup>307</sup>

The threat of HIV transmission is particularly acute given the high prevalence of the virus among prisoners. In 1997, an estimated 8,900 prisoners were infected with HIV and another 8,900 had AIDS.<sup>308</sup> AIDS is currently the second leading cause of death among prison inmates.<sup>309</sup> Between 1991 and 1995 approximately one in three inmate deaths was attributable to AIDS-related causes, compared to one in ten deaths outside the prison setting. Exacerbating the danger of HIV transmission is the lack of preventative measures, with little attempt made to educate prisoners about HIV/AIDS and few risk reduction devices available (such as condoms, clean needles, and bleach).<sup>310</sup>

### **Psychological Impact**

Rape's effects on the victim's psyche are serious and enduring.<sup>311</sup> Inmates like L.T., whether they fall victim to violent sexual attacks or to more subtle forms of sexual abuse, leave the prison system in a state of extreme psychological stress, a condition identified as rape trauma syndrome. Given that many people in such condition leave prison every year, it is important to consider the larger consequences of prison rape. Serious questions arise as to how the trauma of sexual abuse resolves itself when inmates are released into society.

Victims of prison rape commonly report nightmares, deep depression, shame, loss of self-esteem, self-hatred, and considering or attempting suicide. Some of them also describe a marked increase in anger and a tendency toward violence.

#### **Shame and the Loss of Manhood**

*The shame I experienced can't be described.*

CA prisoner in Illinois.<sup>312</sup>

Victims of rape are likely to blame themselves for their predicament, leading to intense feelings of shame. As described previously, situations of unwanted sexual contact in prison run the gamut from violent gang rapes to subtle forms of psychological coercion. Even where extreme violence is used, the

victim often worries, deep down, that he did not put up enough resistance. Indeed, there is some sense, under the unwritten code of inmate beliefs, that a real man **A**would die before giving up his anal virginity.<sup>313</sup> By the very fact of surviving the experience, therefore, a prisoner may worry he deserved it: that he has, at the very least, been proven to be **A**a punk, **>**pussy, **=** or coward by not preventing it.<sup>314</sup> Although this view is not universally held **C**many prisoners recognize that it is the perpetrator alone who bears responsibility for their victimization **C**it is still widespread among inmates.

Obviously, victims of incidents of coerced sex that did not involve overt violence are even more likely to feel complicit in their own abuse. Many of them report thinking obsessively about how they could have avoided the situation, what they did wrong. They speak of profound feelings of shame and embarrassment over how they could have **A**allowed **@**the abuse to happen to them. In a letter to Human Rights Watch, a Colorado inmate whose fear enabled his cellmate to maneuver him into unwanted sexual contact, admitted, **A**If the truth be known, it shames me to even talk of this.<sup>315</sup> His feelings are typical.

In what is perhaps an unconscious effort to shield themselves from responsibility for prison abuses, correctional authorities seem to encourage such attitudes, frequently **A**blaming the victim **@** themselves. Unless a prisoner is visibly injured from a sexual assault, guards often intimate that the sex was consensual: that the prisoner actually invited it. Raped inmates frequently say that they are treated scornfully by guards who do not bother to hide the fact that they despise prisoners who are so **A**weak **@** as to be victimized. **A**Stand up for yourself and be a man, **@** is a common refrain. Gay prisoners, particularly those with stereotypically feminine characteristics or mannerisms, report that guards are especially likely to ignore their claims of sexual abuse. Some guards, in fact, appear not to even recognize that gay inmates have the right to refuse other inmates' sexual advances, viewing homosexuality as a sort of open invitation to sex. As one prisoner, who is not actually gay, remembered: **A**I had an officer tell me that **>**faggots like to suck dick, so why was I complaining.<sup>316</sup>

The tendency to misread victimization as proof of homosexuality appears to be common to guards and prisoners alike. In addition to feelings of fear, depression, and self-hatred, many prisoners have expressed a more specific anxiety about the loss of gender identity, fearing that their **A**manhood **@** has been damaged or eroded. As one sexually abused prisoner confessed: **A**I feel that maybe some women might look at me as less than a man. My pride feels beaten to a pulp.<sup>317</sup>

M.R., a Texas inmate who was nearly killed by his rapist, described this reaction, which he saw as unavoidable: **A**Men are supposed to be strong enough to keep themselves from being raped. So when it does happen it leaves us feeling as though our manhood has been stripped from us and that we are now less than what we once were.<sup>318</sup>

That which is **A**less than a man **@** for these prisoners is, to be specific, a homosexual man, albeit a homosexual defined according to the idiosyncratic rules that govern in the prison context. As described previously, the meaningful distinction in prison is not between men who engage in sex with men, and

those who engage in sex with women; instead it is between what are deemed the Aactive@ and Apassive@ participants in sex. Homophobia is rampant in prisons, but rather than targeting all men who have sexual contact with other men, it is focused against those who play the Awoman=s role@ in sex: specifically, men who are anally penetrated, who perform fellatio on other prisoners, or who masturbate them.

Once a prisoner has been forced into such a role, he may easily be trapped in it. The fact of submitting to rapeCeven violent, forcible rapeCredefines him as Aa punk, sissy, queer.@ Other inmates will view him as such, withholding from him the respect due a Aman.@ Having fallen to the bottom of the inmate hierarchy, he will be treated as though he naturally belongs there.

The belief that rape damages one=s innermost self is strong among inmates. Indeed, for the perpetrators of rape, this belief provides a compelling reason to commit the act: rape appears to be the most powerful way to injure and degrade its victims. But what comes of the victims= conviction that they have been fundamentally damaged? Human Rights Watch=s research suggests that at least some minority of prisoners who endure sexual abuse will turn violence on themselves or others.

### **Depression, Anxiety and Despair**

*I go through nightmares of being raped and sexually assaulted. I can't stop thinking about it. I feel everyone is looking at me in a sexual way.*

CA prisoner in Texas<sup>319</sup>

Psychiatrists have identified Arape trauma syndrome@C a variant of post-traumatic stress disorder (PTSD) characterized by depression, severe anxiety, and despairC as being a common result of rape.<sup>320</sup> In their correspondence and conversations with Human Rights Watch, victims of prison rape frequently alluded to these symptoms, stating they felt depressed, paranoid, unhappy, fatigued, and worried. Feelings of worthlessness and self-hatred were often expressed. Exacerbating the psychological stress of their situation, many victims of prison rape feel that they remain vulnerable to continuing abuse, even believing themselves trapped in a struggle to survive. The fear of becoming infected with the AIDS virus also preoccupies victims. ACatching Aids and Hiv is a major concern for everyone,@ an Arkansas inmate emphasized. AThere is no cure.@<sup>321</sup>

Rape trauma syndrome was first diagnosed outside of the prison setting, looking at women victims, and most research on it has continued to focus on non-incarcerated women. Experts have distinguished three stages in the aftermath of rape, corresponding to its short-, intermediate- and long-term impact. While not all rape survivors exhibit these symptoms in the order described, the typology provides a useful general outline. The short-term reaction to rape is characterized by a range of traumatic symptoms, including nightmares and other forms of sleep disturbance, intense fear, worry, suspicion, major depression, and impairment in social functioning. In the second stage, victims often experience depression and self-hatred, as well as social and sexual dysfunction. The long-term effects of rape, which may surface a year or more after the assault, often involve destructive or self-destructive behavior; common symptoms are anger, hypervigilance to danger, sexual dysfunction and a diminished

capacity to enjoy life.<sup>322</sup>

According to one study, only 10 percent of rape victims do not show any disruption of their behavior following the assault. Some 55 percent of victims display moderately affected behavior, while the lives of another 35 percent are severely impaired.

### **Suicide**

Suicide attempts are a not uncommon response to rape, particularly among prisoners who feel unprotected and vulnerable to continuing abuse. Nineteen inmates who corresponded with Human Rights Watch, including eight interviewed in person, reported that they attempted suicide as a result of rape in prison, and many more reported considering suicide.<sup>323</sup> Indeed, some inmates tried to kill themselves more than once. The following account is typical:

I have been getting sexually assaulted at [Prison X] by two inmates. I tried to commit suicide in hopes of relieving the misery of it. . . . I was made to perform oral sex on the two inmates for exchange of protection from other inmates. . . . I reported the action of the inmates to the Unit authority but did not get any help so that is when I slashed both my wrists in hope of dying.<sup>324</sup>

Another prisoner told Human Rights Watch:

I did nine years from March 1983 to November 1991. In that 9 years I was raped several times . . . . I came back to prison in 1993. In 1994 I was raped again. I attempted suicide. . . . The doctors here in the prison say "major depression multiple neurotic symptoms, marked by excessive fear, unrelenting worry and debilitating anxiety. Antisocial suicidal ideation, self-degradation, paranoia and hopelessness are characteristic,"

The case of Rodney Hulin, Jr., a seventeen-year-old Texas prisoner, is sadly illustrative of the problem. Hulin was repeatedly raped over a two-month period by older inmates. In January 1996, just after he wrote to his father saying he was tired of prison life and tired of living, he attempted suicide by hanging himself in his cell. Although the attempt was discovered before Hulin was dead, he was left in a coma and died four months later.

In general, suicide rates in prisons and jails are well above those in the outside community. Suicide ranks third as a cause of death in prison (after natural causes and AIDS), while it is the leading cause of death in jails.<sup>326</sup> From 1984 to 1993, the rate of prison suicide was more than 50 percent higher than the national average outside of prison.<sup>327</sup> Notably, victimization and conflicts within the [prison] facility are two of the main problems that experts have identified in specifying the stressful factors that result in inmate suicide.<sup>328</sup>

These figures are much more striking when one considers the practical difficulty of committing



suicide in prison. Unlike in the outside world, where an individual can easily isolate himself from other people for hours or days at a time, in prison a person is rarely out of earshot of others, or even out of their sight. Indeed, in today's prisons, many inmates are double-celled or live in crowded dormitories, unlikely places for a suicide attempt to pass unnoticed. Although drugs are dispensed in prison, they are more closely regulated than outside of the prison setting. Most prison suicide attempts, even those in which the inmate is determined to kill himself, are likely to be unsuccessful. Human Rights Watch was unable to obtain comparative statistics on attempted suicides, but would suspect that, in comparing prison numbers with numbers outside of prison, the rates are even more disproportionate than those involving accomplished suicides.

### **Anger and the Cycle of Violence**

*[I]n 1991 I was raped by the Arizona Aryan Brotherhood@a prison gang. I didnt tell the guards, I was scared & alone. The guards knew about it, because they told me they are going to move me, & so they did, but to a worst prison. Where I got into it with more AABs@ . . . I am a 26 year old White Boy who don't have anybody, but a lot of anger! . . . Back to a little more about my Rape. The guys didnt get caught in the Act somebody told the guards and they asked me if I was alright. Then moved me . . . I wanted to go back to the yard and kill them that did it.<sup>29</sup>*

In the aftermath of rape, prisoners often harbor intense feelings of anger. Anger directed first at the perpetrators of abuse, but also at prison authorities who failed to react appropriately to protect them, and even at society as a whole. Some prisoners have confessed to taking violent revenge on their abusers, inspired both by anger and by a desire to escape further abuse. The best and sometimes the only way to avoid the repetition of sexual abuse, many prisoners assert, is to strike back violently. Simply put, to prove that one is not a victim, one must take on the characteristics of a perpetrator. Since violence, in the prison setting, is almost a synonym for strength and virility, a readiness to use violence confirms one's manhood.

A Texas inmate explained the dynamic in the following way:

*It's fixed where if you're raped, the only way you [can stop the abuse is if] you rape someone else. Yes I know that's fully screwed, but that's how your head is twisted. After it's over you may be disgusted with yourself, but you realize you're not powerless and that you can deliver as well as receive pain. Then it's up to you to decide whether you enjoy it or not. Most do, I don't.<sup>30</sup>*

Summing up the situation in a phrase, he emphasized: *People start to treat you right once you become deadly.*

Beyond encouraging violent behavior from its victims, prison rape also evokes violence from

those prisoners with no direct exposure to it. Many inmates, including those who are relatively non-violent by nature, resort to violence as a protective shield against rape, to prove that they are not to be bullied. Studies have found that even the vague, indeterminate possibility of rape is a powerful impetus for prison violence.<sup>331</sup>

In a letter to Human Rights Watch, one prisoner even cited fear of rape as being among the causes of rape itself, sketching an oddly circular picture of the phenomenon. He said: "One reason [for prison rapes] is the insecure, weak inmate preying on another weaker inmate, to make an impression of toughness or ruthlessness that he hopes will discourage other inmates from doing the same thing to him."<sup>332</sup>

Numerous prisoners have described to Human Rights Watch the aggressive postures that they have adopted as a safeguard against rape. By reacting violently to the slightest show of disrespect, inmates believe that they can avoid the slippery slope that leads to rape. A quick resort to violence is, in their view, necessary to prove that they are ready and equipped to protect themselves.

In the prison context, even the most trivial incident can be perceived as a critical test of an inmate's "honor." Violence may ensue at the slightest provocation. The following incident, in which, as this inmate put it, he had to prove to everyone that he was "not going to be anyone's punk," is typical:

one night 4 weeks into my prison stay i was tested by a very big north american prisoner. he attempted to lay a bully game down on me by taking my seat in the lounge room. which led to me resorting back to my street warfare attack which was my only choice to set a solid example that i am not to be played with. The end result was he being put in the hospital, broke jaw/nose, and me having a broke wrist and a battery case.<sup>333</sup>

Besides reacting violently to other inmates' perceived aggressiveness, prisoners in fear of being raped frequently resort to preemptive violence in order to escape to a lock-up unit where they will be protected from attack. Desperate for a transfer to safer surroundings, such inmates purposely act out violently before corrections staff. As one described:

I was sexually assaulted by 4 inmates (black). I went to staff. I was shipped to another unit. I refused to go to my housing assignment due to I was being put back into a life threatening condition. So I started to threaten the first black inmate I came into contact with. I was put in prehearing detention. That's September 15, 1995. I started possessing a weapon and threatening black inmates. That was the only way staff would keep me locked up in a single cell.<sup>334</sup>

Interestingly, even though violent behavior in prison constitutes a disciplinary infraction and can,

in serious cases, result in criminal prosecution and more prison time, corrections officials frequently urge inmates to employ violence to defend themselves from attack. Past studies have found that prison staff counsel prisoners to respond to the threat of sexual assault by fighting the aggressor.<sup>335</sup> Inmates have often reported to Human Rights Watch that guards warn them, "No one is going to babysit you." "Letting them know that they have to act like a man," that is, to react violently to aggressive sexual overtures.

Another contributing factor to violence may be the acute shame that victims commonly experience. Indeed, psychiatrist and prison expert James Gilligan, describing a theory of violence, argues that shame is the primary underlying cause of the problem.<sup>336</sup> Driven by shame, men murder, rape, and punish others. In describing prisons as fertile territory for the shame-violence relationship, Gilligan's observations are consistent with prisoners' reports of their experiences. As one Vermont inmate told Human Rights Watch, "When I came out of prison, I remember thinking that others knew I had been raped just by looking at me. My behavior changed to such cold heartedness that I resented anyone who found reason to smile, to laugh, and to be happy."<sup>337</sup> This man later committed rape after release from prison in what he said was a kind of revenge on the world. K.J., another inmate with whom Human Rights Watch is in contact, similarly believes that it was the trauma of being raped while in jail "unrelieved by any psychological counseling" that led him to later commit rape himself. "I was just locked in shame," he said, explaining the downward spiral that culminated in his rape of two women. "It seemed like rape was written all over my face."<sup>338</sup>

The anger, shame and violence sparked by prison rape "though it may originate in the correctional setting" is unlikely to remain locked in prison upon the inmate's release. As one prisoner emphasized, reflecting upon correctional officials' failure to prevent several rapes in his institution:

[The guards here believe that] the tougher, colder, and more cruel and inhuman a place is, the less chance a person will return. This is not true. The more negative experiences a person goes through, the more he turns into a violent, cruel, mean, heartless individual, I know this to be a fact.<sup>339</sup>

The brutal murder of James Byrd, Jr., in Jasper, Texas, spurred renewed consideration of the impact on society of incarcerating so many of its citizens in places of violent sexual abuse. Byrd, a disabled African American, was killed by three white men, two of whom had been released from Texas prison the previous year. While in prison, the two men acquired a deep hatred of blacks. They joined a white prison gang and covered themselves with racist tattoos. Reflecting on the sexual violence and racial conflicts that plague prisons in Texas, some commentators viewed the two men "and the horrific crime they committed" as the creations of the prison system. In an article subtitled "Did the Texas penal system kill James Byrd?" writer Michael Berryhill noted that the two men's racism "seemed intimately tied to their sexual fears," and that they "seemed obsessed with asserting their masculinity and repudiating homosexuality."<sup>340</sup> He concluded that the hatred evidenced in the Jasper killing was the predictable result of conditions in the state's prisons.

Prison reformers have a clear stake in asserting that prison abuses have a deleterious impact on the world outside of prisons, the logic being that even if the public cares not a whit for the suffering of inmate victims everyone agrees on the desirability of preventing abuses against victims out in society. Unsurprisingly, many reformers have asserted that stopping sexual abuse against prisoners is imperative for pragmatic as well as humanitarian reasons. According to this view, rape not only injures the victim's dignity and sense of self, it threatens to perpetuate a cycle of sexual violence.

You take a guy who's been raped in prison and he is going to be filled with a tremendous amount of rage . . . . Now eventually he is going to get out. Most people do. And all the studies show that today's victim is tomorrow's predator. So by refusing to deal with this in an intelligent way, you are genuinely sentencing society to an epidemic of future rapes.<sup>341</sup>

The claim that prison rape begets further crimes is not universally accepted. Daniel Lockwood, a criminologist who has written extensively on the topic of prison sexual violence, disputes the notion that victims of abuse, embittered by the experience, vent their hostility on the public when released from prison.<sup>342</sup> He states there is little reliable data to support such claims, deriding the idea as a damaging myth.

Evidently, no longitudinal studies have been conducted to specifically document the subsequent criminal history of victims of prison rape, and further empirical research would be of value. Nonetheless, it is clear that the effects of victimization are profound, and that, left to fester, the psychological injury of rape leads some inmates to inflict violence on themselves and others.

### **Inadequate Treatment**

In disregard of the Supreme Court's 1978 ruling that prisoners have the right to adequate medical care for their serious medical needs, many prisoners receive inadequate health care, particularly mental health care. While most prison rape survivors in contact with Human Rights Watch say that they were provided medical treatment for any physical injuries received during the assault, only a minority said that they received the necessary psychological counseling. Yet, by all accounts, rape trauma syndrome is a serious and potentially devastating psychological disorder, demanding careful and sympathetic treatment. Indeed, one appellate court has affirmed that a prison's failure to make adequate psychological counseling available to rape victims violates the U.S. constitution's prohibition on cruel and unusual punishment.<sup>343</sup>

## CASE HISTORIES OF P.N. AND L.T.

**P.N.**

*I Am The Inmate Above And Being Duly Sworn deposes and says:*

*On 06-12-93 I reported that I was having problems out of my work squad with General Populations Inmates and it was going back to my Living Quarters. I was excluded from U.C.C. [classification committee] and denied my Safekeeping due to insufficient evidence . . . . [On another unit] I was being forced to do sexual favors. Ive tried to tell the Infirmary. They didn't want to hear it. On 02-20-95 I was physically assaulted by several I/M which I identified to Sgt. Willis. Then I refused to be placed back on the wing which I was placed on transit, awaiting transfer to another unit. I was transferred on 3-16-95 and en route to the Huntsville Unit once off bus on Unit I was assaulted severely. Once again badly . . . . Upon arrival to Beto One Unit the Warden seen [the bruises on] my face and my body and seen that I was an admitted homosexual and placed me on Safekeeping once again . . . . Then on 10-31-95 I was placed back on Beto One on close custody general population. I had to start catching houses to pay for protection (or) I was gonna be hurt, beat up, or killed. I was forced to catch houses and sex forced on me. So on 11-07-95 I executed a request for protection and on 11-17-95 I was interviewed by Lt. James and I told him I was being forced to perform sexual acts, etc. Nothing was done then . . . . I then was moved to another wing once again after attempt of suicide . . . . My neighbor was acting as my cellie and forcing me to do sexual acts. Then a bunch of Mexicans got word I was on T Wing and sent their homeboy to hurt me while I was on T Wing. He at first sent me a letter through SSI threatening me and I told Lt. James the same night and the I/M was pulled out by Lt. James. And threatened. And the I/M told me I was dead when he could catch me. So I wrote grievance 12-29-95 and attached the threatening letter to it and was denied ANY relief whatsoever. So the guy who was fucking me every night placed shanks in my house and told me to tell the police they were there to get away from the block before I get killed. So I did this but in court pleaded not guilty was found guilty of a weapon and placed in seg even aftr the person who put them there admitted he done it on tape.<sup>344</sup>*

### FACTS

*1) Major J.E. Cook recommended the removal of my safekeep status 08-31-94 haveing full knowledge of my enemies in general population and the fact of me being a homosexual and the past assaults from my fellow I/M in my work squad 35 Hoe.*

*. . . .*

*10.) On 02-16-95 I reported to security that I was being forced to preform sexual*

*act against my will. Which I was found positive with gonorrhea on 02-16-95.  
11.) On 02-21-95 I executed another step one grievance stating that I got  
assaulted which positively identified as A.C. [Aryan Circle] gang members. I was  
placed on the transit status after refusing housing in fear of my safety and being  
sexually assaulted again.*

....

*WHEREFORE, Plaintiff request this HONORABLE COURT to grant the following  
relief:*

*A) Issue a declaratory Judgment that the defendants violated the UNITED  
STATES CONSTITUTION . . .*<sup>345</sup>

A skinny, bespectacled man, P.N. weighed 135 pounds when interviewed by Human Rights Watch in October 1998, well above the 120 pounds he weighed when he first entered prison in 1987 at age nineteen. At that time, having violated the electronic monitoring restrictions imposed on him after he was placed on probation for burglary, P.N. was sent to Beto Unit, in Texas, a prison that was notorious for its gang violence.

P.N. is gay, and acutely aware of the dangers that provokes in Texas prisons. "Homosexuality is a sin in Texas," he emphasized to a Human Rights Watch representative. "In prison it's a curse. If you're gay you really catch hell."<sup>346</sup> Both guards and inmates are homophobic, he believes. In 1987, on his first day in prison, P.N. was hit in the face by a Hispanic inmate named Teardrop. The next day a group of inmates stole all of his personal belongings. "At that time I was still in the closet a bit, but they saw me as weak," he said. "These black guys told me I was going to ride and pay protection. Within a month, this guy was forcing me to have sex."

P.N.'s time in prison has been marked by continual sexual pressuring, threats, and attacks. Once he had a husband who, he says, "took care of me," protecting him from other inmates. During another period, when he was unprotected and subject to constant threats, he cut himself up with a knife and was placed in a medical facility for a few months. At one point he had serious problems with members of the Aryan Circle, a white racist prison gang. Members of the gang wanted him to be a "patch carrier" to have his buttocks emblazoned with a tattoo advertising that he belonged to them. They too promised to protect P.N., but he would have had to "service" dozens of gang members.

P.N. is an admittedly disruptive prisoner who has had numerous disciplinary problems. On several occasions, he claims, he has purposely been caught with a weapon in order to be placed in disciplinary segregation and thereby escape threatened harm from other inmates. He has been violently assaulted several times.

In 1995, when P.N. was in the prison medical facility for self-inflicted injuries, he filed suit against the Texas prison authorities. The gravamen of his claim was that the authorities were well aware of his vulnerability to sexual assault but had failed to protect him from other prisoners. Supporting his

claim were numerous grievances he had filed warning officials that he was at risk of serious harm. His case survived defendants' efforts to throw it out on a summary judgment motion, and it went to trial, but in July 1997 a jury ruled for the defendants.

**L.T.**

*I got a cellie . . . and he said that he would protect me from [inmates who had threatened me] but I had to pay, if I didnt he would let them get me plus he would. He told his homeboy about what was going on and he's homeboy said he was going to protect me also but I had to pay . . . August 1, when the officer [C] open the door I walked out and told him I need to speak with rank that it was very important . . . I told him what my cellie wanted me to do. So he left me there and got rank . . . Sgt. [D] ask me what was going on, I told him and told him that my life was in danger. He said for me to return to my cell and stand up and fight, because this was prison; if I didnt he would get a team and drag my ass back to my house. When I refused, he told [C] to put me in the holding cage. I walked to the cage on my own and went in. Sgt. [D] came back and told me to put the handcuffs on. When I told him I couldnt, he opened the cage door and told me to put the cuffs on. There with him was [C], [F], [M]. I told him if he was gonna force me that they needed to get the camera first. [C] put the handcuffs in my face and said that he was gonna get the camera after he fucked me up. He kept telling me to put the cuffs on, but I refused, because of the risk. So [D] told the officers to grab me. They grabbed me. Stunned me to the floor and began punching me in my head and kicking me in my ribs. They put the handcuffs on and by that time I looked up and a officer had a camera. Sgt. [D] ask me if I would get up on my own. I did. They took me to medical and brought me back to my cell. When they put me back in my cell, I was crying for what they done. My cellie's homeboy that said he would protect me he came over to my cell when they ran rec. My cellie was gone. He ask me what happen and what was I crying for. He ask me how I was going to pay him. I told him when I went to the store I would pay him. But he said I want to fuck. I told him that I didnt do that. He said you remember what the deal we made. So I said but I dont do that kind of stuff. So he kept saying he aint gonna take long. So he had me have anal sex with him. After that, my cellie came back from rec, he found out what his homeboy did and told me he wanted to do the same. He also made me have anal sex. The next day the same officers were working and I was scared to tell them because of what they did before . . . My cellie told me that at last chow his homeboy wanted me to come over and stay all night in his cell. So I waited until last chow. I went an ate, when I came back there was a officer walking with all the inmates. So I let all the inmates go in and stop the officer and told him the problem . . . He took me to see Lt Tucker. I told her what was going on, and needed to be locked up. She told me the only way that I could get locked up was*

*if I refused housing and I would receive a case. I said I didnt care, I just needed her help. She sent me to lock up (pre-hearing detention). There I was given 15 days solitary . . . . I was pulled out and seen by Mrs. [A], Capt. [R], and Major [I]. I told my complaint and Mrs. [A] said that I was never raped that I just gave it up. Capt. [R] said that close custody was no risk, that I was well protected. I asked him how so, when I was raped plus inmates get stabbed each day. I wasnt answered. They tried to make it look as if I was asking for a transfer and not protective custody. I was denied help and sent back to my cell . . . . I took 18 pills trying to overdose. I was sent to medical and put back in my cell. From then on I began geting cases everyday to stay in solitary. Finally they got tired of me geting cases and refusing housing and placed me in segregation.<sup>347</sup>*



## VII. ANOMALY OR EPIDEMIC: THE INCIDENCE OF PRISONER-ON-PRISONER RAPE

No conclusive national data exist regarding the prevalence of prisoner-on-prisoner rape and other sexual abuse in the United States.<sup>348</sup> *Terror in the Prisons*, the first book on rape in prison aimed at a popular rather than an academic audience, predicted in 1974 that ten million of the forty-six million Americans who are arrested at some point in their lives would be raped in prison.<sup>349</sup> Filled with gripping anecdotal accounts of prisoner-on-prisoner sexual abuse, the book offered no explanation as to how it arrived at this astonishingly high figure.

Few other commentators have even ventured to speculate on the national incidence of rape in prison, although some, extrapolating from small-scale studies, have come up with vague estimates as to its prevalence, suggesting that rape is a rare event, that it may be a staggering problem, or even that it is virtually universal.<sup>350</sup> The obvious inconsistency of these estimates says much about the lack of reliable national data on the issue, as well as evidencing researchers' varying definitions of rape and other sexual abuse.

Unsurprisingly, when corrections officials are asked about the prevalence of rape in their prisons, they claim it is an exceptional occurrence rather than a systemic problem. Prison officials in New Mexico, for example, responding to our 1997 request for information regarding the "problem" of male inmate-on-inmate rape and sexual abuse (the internal quotation marks are theirs), said that they had no recorded incidents over the past few years.<sup>351</sup> The Nebraska Department of Correctional Services informed Human Rights Watch that such incidents were minimal.<sup>352</sup> Only Texas, Ohio, Florida, Illinois and the Federal Bureau of Prisons said that they had more than fifty reported incidents in a given year, numbers which, given the large size of their prison systems, still translate into extremely low rates of victimization.<sup>353</sup>

Yet a recent academic study of an entire state prison system found an extremely high rate of sexual abuse, including forced oral and anal intercourse. In 1996, the year before Nebraska correctional officials told Human Rights Watch that prisoner-on-prison sexual abuse was uncommon, Professor Cindy Struckman-Johnson and her colleagues published the results of a survey of state prison inmates there. They concluded that 22 percent of male inmates had been pressured or forced to have sexual contact against their will while incarcerated.<sup>354</sup> Of these, over 50 percent had submitted to forced anal sex at least once.<sup>355</sup> Extrapolating these findings to the national level would give a total of over 140,000 inmates who have been anally raped.<sup>356</sup>

The following chapter does not offer a definitive answer as to the national incidence of prisoner-on-prisoner rape and other sexual abuse. It does, however, explain why Human Rights Watch considers the problem to be *much* more pervasive than correctional authorities acknowledge. Comparing the numbers collected by correctional authorities and academic experts, this chapter explains the factors leading to drastic underestimates of the frequency of prisoner-on-prisoner rape and

other sexual abuse. It also examines the disparities in academic findings on the topic, which vary according to the different situations studied, the differing methodologies utilized, and the inconsistent definitions of rape and sexual abuse employed.

### Chronic Underreporting

*None of the types of prison rape described [what he calls Aconfidence rape,@ Aextortion rape,@Astrong arm rape,@etc.] are rare. If anything they are rarely reported. To give you an idea of how frequent rape is in prison, if victims would report every time they were raped in prison I would say that in the prison that I am in (which is a medium minimum security prison) there would be a reported incident every day.*

CPennsylvania inmate.

Only a small minority of victims of rape or other sexual abuse in prison ever report it to the authorities. Indeed, many victimsCcowed into silence by shame, embarrassment and fearCdo not even tell their family or friends of the experience.

The terrible stigma attached to falling victim to rape in prison, discussed above, discourages the reporting of abuse. Deeply ashamed of themselves, many inmates are reluctant to admit what has happened to them, particularly in situations in which they did not put up obvious physical resistance. Rather than wanting others to know of their victimization, their first and perhaps strongest instinct is to hide it. AI was too embarrassed to tell the [corrections officers] what had happened,@explained a Kansas inmate. AThe government acts as if a >man= is supposed to come right out and boldly say >I=ve been raped.= You know that if it is degrading for a woman, how much more for a man.@<sup>357</sup> Some prisoners informed Human Rights Watch that they have told no one else, not even their family, of the abuse. A[Y]ou are the first person I=ve told in all of these years,@said one, describing a rape that took place in 1981.<sup>358</sup>

Prisoners= natural reticence regarding rape is strongly reinforced by their fear of facing retaliation if they Asnitch.@ As is well known, there is a strongly-felt prohibition among inmates against reporting another inmate=s wrongdoing to the authorities. ASnitches@or Arats@Cthose who inform on other inmatesCare considered the lowest members of the inmate hierarchy. AThese people become victims of [assault] because of their acts in telling on other people,@one inmate emphasized to Human Rights Watch.<sup>359</sup> In the case of rape, the tacit rule against snitching is frequently bolstered by specific threats from the perpetrators, who swear to the victim that they will kill him if he informs on them.<sup>360</sup>

Prisoners who failed to report their victimization explained these considerations to Human Rights Watch. In a typical account, a Colorado prisoner said:

I never went to the authorities, as I was too fearful of the consequences from any other inmate. I already had enough problems, so didn't want to add to them by taking on the

prison identity as a ~~Arat~~@ or ~~Asnitch~~.@ I already feared for my life. I didn't want to make it worse.<sup>361</sup>

It should be emphasized, moreover, that prisoners' failure to report abuses is directly related to the prison authorities' inadequate response to reports of abuse. If prisoners could be certain that they would be protected from retaliation by the perpetrator of abuse, then they would obviously be much more likely to inform the authorities. But rather than keeping the victimized inmate safe from retaliation, prison authorities often leave them vulnerable to continued abuse. As is described at length below, Human Rights Watch has learned of numerous cases in which the victimized inmate was not removed from the housing area in which he was victimized, even with the perpetrator remaining there. In other cases, victimized inmates are transferred to another housing area or prison, but still face retaliation. As a Texas prisoner explained:

[T]he first time I was raped, I did the right thing. I went to an officer, told him what happened, got the rectal check, the whole works. Results? I get shipped to [another prison]. Six months later, same dude that raped me is out of seg and on the same wing as I am. I have to deal with 2 jackets now: snitch & punk. I . . . had to think real fast to stay alive. This was my first 2 years in the system. After that I knew better.<sup>362</sup>

A Utah prisoner had a nearly identical story to tell:

The first time [I was raped] I told on my attackers. All [the authorities] did was moved me from one facility to another. And I saw my attacker again not too long after I told on him. Then I paid for it. Because I told on him, he got even with me. So after that, I would not, did not tell again.<sup>363</sup>

Past academic research has confirmed the prevalence of underreporting. The 1996 Nebraska study found that only 29 percent of victimized inmates had informed prison officials of the abuses they suffered.<sup>364</sup> Similarly, a 1988 survey of correctional officers in Texas found that 73 percent of respondents believed that inmates do not report rape to officials.<sup>365</sup> A groundbreaking 1968 study of Philadelphia penal institutions found that of an estimated 2,000 rapes that occurred, only ninety-six had been reported to prison authorities.<sup>366</sup>

### **Low Numbers Reported by State Correctional Authorities**

When questioned on the topic, state prison officials report that rape is an infinitely rare occurrence. Human Rights Watch conducted a three-year survey of state departments of correction, as well as the Federal Bureau of Prisons, asking, among other things, about reported incidents of male inmate-on-inmate rape and sexual abuse.<sup>367</sup> Of the forty-seven corrections departments that responded to at least one of our requests for information, only twenty-three were even able to provide such statistics, with others suggesting that inmate-on-inmate sexual abuse was so infrequent that it was unnecessary to maintain separate data on the topic. The response of Hawaiian prison officials was

typical:

While there have been isolated cases [of inmate-on-inmate sexual abuse] over the years, this behavior is not a major problem in our system. Due to the small number of cases, we do not have any statistics compiled on this subject.<sup>368</sup>

New Hampshire officials, similarly, told us:

Because of the very small number of allegations of rape and the even smaller number of substantiated cases, the N.H. Department of Corrections does not maintain statistical data regarding this issue . . . . In conversation with [an officer in the Investigations Office] regarding your inquiry, he said that there are one or two allegations a year in our men's prison of rape. He further stated that of 10 allegations, perhaps one actually was a rape.<sup>369</sup>

Even California, which, with a population of over 150,000 inmates, is the largest corrections department in the United States, was unable to provide Human Rights Watch with data on the topic until 1999. Although the department had a separate data analysis unit charged with maintaining all types of information on state prisoners, it did not keep statistics on inmate-on-inmate rape or sexual abuse. Instead, all such cases were compiled within the general category of inmate-on-inmate battery.<sup>370</sup> Only in response to Human Rights Watch's 1999 letter were they able to provide particularized data on the topic, presumably due to recent changes in record-keeping policies. The Federal Bureau of Prisons, on the other hand, was able to provide such information in 1996 and 1997, but in subsequent years reported that it did not maintain such statistics.<sup>371</sup>

Many other corrections departments told Human Rights Watch that they heard of only a handful of rape or sexual assault cases annually. Colorado, Kansas, Kentucky, Missouri, New Jersey, Oregon, Pennsylvania, South Dakota, and Wisconsin, for example, all mentioned fewer than ten reported cases annually in the years for which they provided information.<sup>372</sup> Arizona, Arkansas, California, Michigan, New York, North Carolina, and Virginia identified between ten and fifty reported cases annually in the years for which they provided information, although Virginia noted that roughly half of its reported cases were, upon investigation, determined to be unfounded.<sup>373</sup>

Only Florida, Illinois, Ohio, Texas, and the Federal Bureau of Prisons acknowledged having received more than fifty allegations annually of rape or other sexual abuse in the years for which they provided information.<sup>374</sup> In Ohio, however, of the fifty-five reported cases in 1999, only eight were subsequently confirmed as sexual assault. The remainder were deemed to have been either consensual sex acts or simply fabrications by the alleged victim.<sup>375</sup> At any rate, since these five prison systems are among the largest in the country (ranking fifth, seventh, sixth, second, and third in size, respectively), the number of allegations of sexual victimization are still remarkably low.

By far the highest rate and highest absolute number of *alleged* inmate-on-inmate sexual assaults, according to the numbers provided by correctional departments, belong to Texas. With 237 allegations of sexual assault in 1999 (over double the number of allegations registered in 1998), compared to an inmate population of 146,574, Texas had one allegation of sexual assault for every 618 prisoners.<sup>376</sup>

### **High Numbers Estimated by Correctional Officers**

The extremely low numbers of rapes reported by prison officials contrast with the much higher prevalence found in academic surveys of inmate victimization. But even more surprisingly, these low numbers stand in stark contrast to estimates made by correctional officers on the subject. Although only a few studies have been conducted to assess guards' beliefs regarding inmates' sexual victimization, they have uniformly found a high rate of inmate-on-inmate sexual abuse.

A corrections department internal survey of guards in a southern state (provided to Human Rights Watch on the condition that the state not be identified) found that line officers—those charged with the direct supervision of inmates—estimated that roughly one-fifth of all prisoners were being coerced into participation in inmate-on-inmate sex. Interestingly, higher-ranking officials—those at the supervisory level—tended to give lower estimates of the frequency of abuse, while inmates themselves gave much higher estimates: the two groups cited victimization rates of roughly one-eighth and one-third, respectively. Although the author of the survey was careful to note that it was not conducted in accordance with scientific standards, and thus its findings may not be perfectly reliable, the basic conclusions are still striking. Even taking only the lowest of the three estimates of coerced sexual activity—and even framing that one conservatively—more than one in ten inmates in the prisons surveyed was subject to sexual abuse.

Similarly, a 1988 study of line officers in the Texas prison system found that only 9 percent of officers believed that rape in prison was a rare occurrence, while 87 percent thought that it was not rare.<sup>377</sup> These findings are even more notable when one considers that the question was limited to instance of rape—not sexual abuse in general—a term that many people conceive of narrowly (typically believing that rape only occurs where force is used).

Finally, the 1996 Nebraska study found that prison staff in three men's prisons estimated that in all some 16 percent of male inmates were being pressured or forced into sexual contact.<sup>378</sup> The rates were slightly lower than those estimated by inmates in the same facilities.

### **Findings of Empirical Studies**

A number of empirical studies have been conducted to measure the frequency of inmate-on-inmate sexual abuse, although only two such studies date from the past decade. Their findings as to the prevalence of sexual abuse—and rape in particular—have varied. Yet even those reporting a lower prevalence still differ, by at least an order of magnitude, from the numbers cited by corrections authorities, indicating that much needs to be done to sensitize the authorities to the problem. Several studies, moreover, have found shockingly high rates of sexual abuse.

The primary empirical studies of sexual abuse in men's penal facilities are: 1) a 1968 study of Philadelphia penal facilities; 2) a 1980 study of several New York state prisons; 3) a 1982 study of a medium-security California prison; 4) a 1982 study of several federal prisons; 5) a 1989 study of an Ohio prison; 6) a 1995 study of a medium-security Delaware prison; 7) the above-mentioned 1996 study of Nebraska state prisons, and 8) a 2000 study of seven prisons in four midwestern states.<sup>379</sup>

The first empirical study of the issue, sparked by reports that Philadelphia pretrial detainees were being raped even in vans on the way to court, was conducted in 1968 by a local district attorney. After interviewing thousands of inmates and hundreds of correctional officers, as well as examining institutional records, he found that sexual assaults were epidemic in the Philadelphia system. A[V]irtually every slightly-built young man committed by the court is sexually approached within a day or two after his admission to prison, the author said. Many of these young men are repeatedly raped by gangs of prisoners.<sup>380</sup> In all, he found that slightly over 3 percent of inmates—estimated 2,000 men—had been sexually assaulted during the twenty-six-month period examined. Although he was careful to exclude instances of consensual homosexual contact from his findings, he also acknowledged that some instances of apparently consensual sex might in fact have a coercive basis, due to the fear-charged atmosphere of the penal system.

The New York study, conducted by criminologist Daniel Lockwood, was the second major effort to assess the prevalence of prisoner-on-prisoner sexual abuse. It too found that sexual targeting—typically accompanied by violence—was frequent, though actual rape much less common. According to Lockwood's data, based on interviews with eighty-nine randomly selected inmates, 28 percent had been the targets of sexual aggression at some point, but only one inmate had been raped.<sup>381</sup>

The 1982 study of a medium-security men's prison in California found that a startling 14 percent of prisoners had been forced into anal or oral sex. Based on data from anonymous questionnaires distributed to a random sampling of 200 members of the inmate population—or some 10 percent of the total inmates—the study emphasized that sexual exploitation in prison is an actuality.<sup>382</sup> Indeed, asserted the authors, life behind bars is, for many inmates, a criminal act itself.

Three subsequent empirical studies had mixed findings as to the prevalence of prisoner-on-prisoner rape and other sexual abuse. The federal prisons study, published in 1983, found that only one of 330 inmates had been forcibly sodomized while in federal prison while two others had been forced to perform a sex act (presumably fellatio or some other act besides sodomy). Twenty-nine percent of inmates did, however, state that they had been propositioned for sex while in their institution, and 11 percent had been targets of sexual aggression. The authors defined sexual aggression narrowly, only considering acts that involved physical violence. Similarly, the Ohio and Delaware studies looked only at rape (which many people, inmates in particular, interpret as requiring the use of physical force), finding few incidents: none of the 137 inmates surveyed in Ohio had been victims of rape, and only one of 101 inmates surveyed in Delaware.<sup>383</sup> Five additional Delaware inmates did, however, say that they

had been subject to an attempted rape; 4 percent of the inmates surveyed reported that they had witnessed at least one rape within the previous year, and 21.8 percent said that had witnessed at least one attempted rape.

The 1996 Nebraska study, discussed above, found an extremely high rate of sexual abuse, including forced or coerced oral and anal intercourse; it concluded that 22 percent of male had been sexually pressured or abused since being incarcerated. Notably, the authors focused on unwanted sexual contact covering a much broader range of sexual activity than that simply involving physical force. And, in December 2000, the *Prison Journal* published the results of a similar study of inmates in seven men's prison facilities in four mid-western states. The results showed that 21 percent of the inmates had experienced at least one episode of pressured or forced sexual contact since being incarcerated, and at least 7 percent had been raped in their facility.<sup>384</sup>

It is obvious that precise conclusions as to the national prevalence of prisoner-on-prisoner sexual abuse cannot be drawn from the above studies.<sup>385</sup> Yet a closer examination of the studies reveals that their differing findings are not so much in contradiction with one another as they are simply measuring different types of behavior. Many of the studies that found lower rates of abuse either expressly counted only incidents involving the use of physical force, or did so by implication by leaving the term rape undefined.

The Delaware study, for example, which provided the inmates surveyed with a definition of rape, described it as oral or anal sex that is forced on somebody. Consensual sex, also defined, was specified to be oral or anal sex that is agreed on before the act takes place. Yet, as described in Chapter VI of this report, a narrow focus on incidents involving the actual use of force is likely to result in a serious underestimate of the prevalence of sexual abuse. Indeed, the authors of the Delaware study recognize this problem, stating that the consensual sex reported by our respondents may instead be situations of sexual exploitation.<sup>386</sup> Nonetheless, their findings are expressed without any consideration of this important nuance: the study simply concludes that the preponderance of [sexual contact in prison] is consensual sex rather than rape.<sup>387</sup>

Differing methodologies inmate interviews vs. anonymous surveys, etc. may also account for much of the inconsistency in the findings, yet there is another important factor as well. Human Rights Watch's research, which has been national in scale, has convinced us that there are significant differences in victimization rates among prison systems, and from prison to prison within a given jurisdiction. To some extent, these differences reflect variations in inmate populations. There are, for example, generally more violent inmates in maximum security facilities, and thus relatively more sexual abuse. But, as many inmates themselves have pointed out, an even more important factor is the level of official attention to or tolerance of the problem. "Where I am now," explained an Arizona prisoner, "the warden doesn't put up with it. When they notice someone being exploited, the situation is investigated and more than likely the victimizer is punished."<sup>388</sup> This prisoner compared the relative calm of his present facility to the "out of control" environment of other facilities where he had been housed.

Unfortunately, from what Human Rights Watch has seen, the staff vigilance found at this prisoner's facility is far too rare.

The question of how prison officials handle the problem of prisoner-on-prisoner sexual abuse—whether they recognize it, what steps they take to prevent it, and how they respond to incidents of it—is a crucial one. The following chapter will explain the deficiencies of the authorities' approach to the problem in detail, but the short answer is that in every area they do far too little.



## CASE HISTORY OF B.L.

### B.L.

*I was young and yes i was weak. My weight was only 120 lbs, the first few months i was raped and beat up many times, i would always Fight back, i wanted my attackers to know i was not a Willing Subject for their evilness. I went to the Guards for help and was told there was nothing that could be done, that i would have to stand up like a Man and Take Care of my own troubles.*<sup>389</sup>

Prisoners targeted for rape are faced with the difficult decision of how best to cope with the problem: whether to report it to prison officials or to handle it on their own. Although reporting the problem is, from the perspective of an orderly prison system, clearly the appropriate course of action, few prisoners have found it to be an effective one. Indeed, many inmates relate that guards and other correctional staff fail to take any protective measures in response to their calls for help, instead advising them to fight their attacker. Some prisoners do end up taking this tack and, for the lucky ones, it works. Yet B.L.'s story is a cautionary one for prisoners who choose to take action against their rapists.

An unwanted child from a family of poor white Southerners, B.L. bounced from caretaker to caretaker while he was growing up, spending a stint in the Kentucky Children's Home and several reform schools, and receiving only a sixth grade education. As a teenager, he was a chronic runaway and heavily addicted to sniffing glue. At age seventeen, he was sent to Tennessee State Prison for robbery. In 1977, when Lusk was twenty-six years old, he was sent to Florida State Prison for armed robbery and murder, the latter charge stemming from the accidental death of a robbery victim, who choked to death on a gag.

At that time Florida State Prison (FSP), a maximum security institution, was extremely dangerous. B.L. was quiet, scared, and physically weak, characteristics that in the violent prison setting guaranteed that he would be targeted for abuse. As one of his fellow prisoners later explained:

B. was a quiet guy. He never messed with anyone else. Because B. was paranoid and worried all the time, he was easy prey for the other inmates. I knew that B. was raped at least two or three times by different guys.<sup>390</sup>

During the second half of 1978, B.L. caught the attention of S.M., a white gang member who had recently been transferred to FSP from another facility. A few years previously, S.M. had been found guilty of murdering another inmate: S.M. and several other inmates were reported to have sexually assaulted their victim and then stabbed him to death. At FSP, S.M. ran a prison gang that preyed up weaker inmates; B.L. was soon targeted. S.M. directed a steady stream of abuse and threats toward B.L., including threats of rape. A prisoner who knew both inmates described the situation:

S.M.'s theft ring included his enforcers, who would threaten anyone with physical

harm if they did not turn over their valuables to S.M.. If anyone resisted, they would be beaten, raped and then labeled a homosexual . . . . When S.M. came out of lock up he was moved to A K wing where B.L. was housed . . . . S.M. began to put lots of pressure on B.L., demanding that he give S.M. money. It was easy to see how afraid B.L. was.<sup>391</sup>

Finally, two days before Thanksgiving, S.M. forcibly sodomized B.L. while some of S.M.'s friends held B.L. down. According to B.L., S.M. Atold me if I went to the Guards I would be Killed@Ctherefore B.L. did not report the attack.<sup>392</sup> On Thanksgiving day, S.M. returned to B.L.'s cell with two other inmates, robbed him, and threatened to rape him again. B.L. then brought a homemade knife to the dining S.M. at lunchtime that day and stabbed S.M. three times in the back. S.M. died of his injuries, and B.L. was convicted of first degree murder.

A 1980 report by the Corrections Committee of the Florida House of Representatives, documenting the dire state of the prison system at that time of the incidentCand singling out FSP for criticismCdescribes why an inmate might, in desperation, attack his rapist. Based on extensive documentary research and numerous interviews, including with nine Florida correctional officers, the report concludes bluntly that the prison system Aseems to condone certain forced homosexual acts.@<sup>393</sup> As it explains:

Brutality in the form of physical attacks, many homosexual, is commonplace in some of Florida's prisons. Many [attacks] go unreported or ignored by Department employees who have knowledge of them . . . . [L]ittle is done to protect [rape] victims who report such assaults from further abuse. And clearly, the victim fears retaliation and may remain silent. He soon learns that his choice is to fight or be enslaved in homosexual bondage . . . . This is even more likely to seem his only choice after he realizes that in some instances even the correctional employees charged with protecting his welfare are not above victimizing, harassing or assaulting inmates. Desperation becomes a fact of everyday life within many of Florida's prisons . . . . Florida State Prison is such a miasm of unmet needs and human misery that it is difficult to formulate specific recommendations which are not so sweeping as to appear irresponsible.<sup>394</sup>

The testimony of correctional officers in the 1980 report is particularly informative. One officer, when asked what would happen to a young inmate newly arrived to a prison, explained that the inmate had Aalmost zero@chance of escaping rape, Aunless he's willing to stick somebody with a knife and fortunate enough to have one.@<sup>395</sup>

B.L.'s prosecution illustrates the pitfalls of this officer's implicit advice. The jury in the trial for S.M.'s murder recommended that B.L. be sentenced to life in prison, yet the trial judge, whose own wife was murdered when he was a young prosecutor, overrode the jury's recommendation and sentenced B.L. to death. After nearly twenty years of appeals and executive clemency proceedings,

leading to a judicial ruling that the state had failed to consider relevant evidence at trial, B.L.'s death sentence was commuted in 1996 to life in prison.

## **VIII. DELIBERATE INDIFFERENCE: STATE AUTHORITIES- RESPONSE TO PRISONER-ON PRISONER SEXUAL ABUSE**

Rape occurs in U.S. prisons because correctional officials, to a surprising extent, do little to stop it from occurring. While some inmates with whom Human Rights Watch is in contact have described relatively secure institutions where inmates are closely monitored, where steps are taken to prevent inmate-on-inmate abuses, and where such abuses are punished if they occur many others report a decidedly laissez faire approach to the problem. In too many institutions, prevention measures are meager and effective punishment of abuses is rare.

It might be assumed that victims of prison rape would find a degree of solace in securing accountability for the abuses committed against them. Unfortunately, our justice system offers scant relief to sexually abused prisoners. Few local prosecutors are concerned with prosecuting crimes committed against inmates, preferring to leave internal prison problems to the discretion of the prison authorities; similarly, prison officials themselves rarely push for the prosecution of prisoner-on-prisoner abuses. As a result, perpetrators of prison rape almost never face criminal charges.

Internal disciplinary mechanisms, the putative substitute for criminal prosecution, also tend to function poorly in those cases in which the victim reports the crime. In nearly every instance Human Rights Watch has encountered, the authorities have imposed light disciplinary sanctions against the perpetrator perhaps thirty days in disciplinary segregation if that. Often rapists are simply transferred to another facility, or are not moved at all. Their victims, in contrast, may end up spending the rest of their prison terms in protective custody units whose conditions are often similar to those in disciplinary segregation: twenty-three hours per day in a cell, restricted privileges, and no educational or vocational opportunities.

Disappointingly, the federal courts have not played a significant role in curtailing prisoner-on-prisoner sexual abuse. Of course, the paucity of lawyers willing to litigate such cases means that only a small minority of rape cases reach the courts. Filed by inmates acting as their own counsel, such cases rarely survive the early stages of litigation; the cases that do survive rarely result in a favorable judgment. While there have been a few generous damages awards in cases involving prisoner-on-prisoner rape, they are the very rare exceptions to the rule.

In sum, the failure to prevent and punish rape results implicates more than one government body. The primary responsibility in this area, however, is borne by prison authorities. Rape prevention requires careful classification methods, inmate and staff orientation and training, staff vigilance, serious investigation of all rape allegations, and prosecution of those allegations found to be justified. At bottom, it requires a willingness to take the issue seriously, to be attentive to the possibility of victimization, and to consider the victim's interests. Without these basic steps, the problem will not go away. Rape is not an inevitable consequence of prison life, but it certainly is a predictable one if little is done to prevent and punish it.

## **Failure to Recognize and Address the Problem and the Perverse Incentives Created by Legal Standards**

*Regrettably [rape] is a problem of which we are happier not knowing the true dimensions. Overcrowding and the Anything goes morality sure haven't helped.*

CHigh-level state corrections official who spoke on condition of anonymity.<sup>396</sup>

The sharp disparities between correctional authorities' reports of the prevalence of rape and the findings of empirical studies, described in the previous chapter, signal a fundamental obstacle to prevention efforts: correctional authorities' failure to acknowledge that a problem exists. Nearly half of all state jurisdictions do not even collect statistics regarding the incidence of rape (a telling indicator of their lack of seriousness in addressing the issue); those that do collect such data report that it is an infinitely rare event. Yet, as previously stated, empirical surveys of inmates and correctional staff disclose much higher rates of rape and sexual assault. Since the causes of underreporting are well known to prisoners and prison administrators alike, a low frequency of reported cases is no reason for correctional authorities to turn a blind eye to the problem.

Unfortunately, Human Rights Watch's survey of the prevention practices of state and federal correctional departments revealed that few departments take specific affirmative steps to address the problem of prisoner-on-prisoner rape.<sup>397</sup> Nearly all of the departments who responded to our request for information had not instituted any type of sexual abuse prevention program and only a very few—such as Arkansas, Illinois, Massachusetts, North Carolina, New Hampshire, and Virginia—stated that correctional officers receive specialized training in recognizing, preventing, and responding to inmate-on-inmate sexual assault.<sup>398</sup> Similarly, not many departments had drafted specific protocols to guide staff response to incidents of assault.<sup>399</sup> Nor, according to a recent survey, do many departments' internal disciplinary policies explicitly prohibit sexual harassment among male inmates.<sup>400</sup>

Until very recently, the same was true for the problem of custodial sexual abuse of women inmates.<sup>401</sup> Even now, much remains to be done to address the problem effectively, but important steps in that direction have been taken. The National Institute of Corrections (NIC), for example, provides specialized training to corrections staff on the issue, and a number of states have promulgated specific written policies to guide staff handling of cases of abuse.

High profile class action law suits helped spur correctional authorities to take the problem of custodial sexual abuse seriously. Normally, the threat of litigation creates an important incentive for state authorities to come to grips with certain problems. Notably, the state of Arkansas—one of the only states that was able to provide Human Rights Watch with a concrete description of the training and orientation measures that it takes with regard to the problem—included a discussion of litigation and staff liability for prisoner-on-prisoner sexual abuse at the very beginning of its training curriculum on the subject.<sup>402</sup>

Yet, unfortunately, the legal rules that the courts have developed relating to prisoner-on-prisoner sexual abuse create perverse incentives for authorities to ignore the problem. Under the *deliberate indifference* standard that is applicable to legal challenges to prison officials' failure to protect prisoners from inter-prisoner abuses such as rape, the prisoner must prove to the court that the defendants had *actual knowledge* of a substantial risk to him, and that they disregarded that risk. As the courts have emphasized, it is not enough for the prison to prove that the risk was obvious and a reasonable prison official would have noticed it.<sup>403</sup> Instead, if a prison official lacked knowledge of the risk no matter how obvious it was to anyone else he cannot be held liable.

The incentive this legal rule creates for correctional officials to remain unaware of problems is regrettable. Indeed, in many lawsuits involving prisoner-on-prisoner rape, the main thrust of prison officials' defense is that they were unaware that the defendant was in danger. More generally, officials in such cases often argue that rape in their facilities is a *rarity* not a serious risk.<sup>404</sup> They certainly have no incentive, under the existing legal standards, to try to ascertain the true dimensions of the problem.

### **The North Carolina Pilot Program**

An encouraging exception to the overall absence of particularized attention to prisoner-on-prisoner sexual abuse can be found in North Carolina. In 1997, the legislature passed a law establishing a pilot program on sexual assault prevention in the prisons.<sup>405</sup> Covering only three units of the state prison system, the program is otherwise a laudable attempt at addressing the problem of inmate-on-inmate sexual abuse. It provides that the orientation given inmates will include information on the reducing the risk of sexual assault and that counseling on the topic will be provided to any prisoner requesting it. It also requires that the correctional authorities collect data on incidents of sexual aggression and develop and implement employee training on the topic.

The program's rules on classification and housing are particularly valuable. They provide that all prisoners must be evaluated and classified as to their risk of being either the victim or perpetrator of sexually assaultive behavior. These classifications are to be taken into account when making housing assignments. In particular, inmates deemed vulnerable to assault are barred from being housed in the same cell or in small dormitories with inmates rated as potential perpetrators.

### **Lack of Prisoner Orientation**

*I have been to 4 Ohio prisons and at no time was I ever warned about the danger of sexual assault. No one ever told me of ways to protect myself. And to this day I've never heard of a procedure for reporting rape. This is never talked about.*  
 An Ohio inmate.<sup>406</sup>

Prisoners almost uniformly related to Human Rights Watch that on entering prison they received no formal orientation regarding how they might avoid rape or what steps they should take if they were subject to or threatened with rape. As described in chapter IV, prisoners who are unfamiliar with the

ins and outs of prison life tend to be more vulnerable to rape. Not knowing the tricks and ruses that lead to sexual abuse, they have no idea when they are being set up for victimization. A detailed and realistic prisoner orientation program<sup>406</sup> that explains common exploitation scenarios as well as describing how to obtain official protection<sup>407</sup> could be effective in strengthening prisoners' abilities to react appropriately to sexual targeting.

A few states, whose example should be followed more widely, have in fact established orientation programs relating to the issue. The Virginia Department of Corrections, for example, told Human Rights Watch that all inmates receive orientation on how to avoid sexual aggression upon entry the prison system. The inmate handbook, which is provided to all prisoners, also includes a short section on *How to Avoid Homosexual Intimidation*.<sup>407</sup> It gives advice such as *Don't get into debt,* and *Don't solicit or accept favors, property or drugs.*<sup>408</sup> Arkansas has a similar orientation program; it too includes such warnings.<sup>408</sup>

The Illinois Department of Corrections said that it had a similar orientation program, and it forwarded Human Rights Watch excerpts discussing sexual assault from inmate handbooks distributed in several facilities. One excerpt was particularly useful in that it included a detailed description of the procedure by which the facility handled claims of sexual assault.<sup>409</sup> North Carolina, while it did not provide a copy of the course materials, also told Human Rights Watch that incoming inmates were advised *About the risks of sexual assault and what steps they may take to prevent such assault and seek assistance from staff.*<sup>410</sup>

### **Improper Classification and Negligent Double-Celling**

Among the goals of prisoner classification policies is to separate dangerous prisoners from those whom they are likely to victimize. At one extreme are *supermax*,<sup>411</sup> or administrative segregation units, where prisoners with a history of violence or indiscipline are held; at the other are protective custody units where the most vulnerable inmates are held.<sup>411</sup> Yet even between these extremes, the existence of various security levels (e.g., minimum, medium, maximum or close custody), and the range of categorization alternatives within these levels, are supposed to allow prison authorities flexibility in arranging inmates' housing and work assignments so as to minimize inter-prisoner violence and victimization.

In the overcrowded prisons of today, however, the practical demands of simply finding available space for inmates have to a large extent overwhelmed classification ideals. Inmates frequently find themselves placed among others whose background, criminal history, and other characteristics make them an obvious threat.

In the worst cases, prisoners are actually placed in the same cell with inmates who are likely to victimize them<sup>412</sup> sometimes even with inmates who have a demonstrated proclivity for sexually abusing others. The case of Eddie Dillard, a California prisoner who served time at Corcoran State Prison in 1993, is an especially chilling example of this problem. Dillard, a young first-timer who had kicked a

female correctional officer, was transferred to the cell of Wayne Robertson, a prisoner known by all as the ABooty Bandit.<sup>412</sup> The skinny Dillard was no match for Robertson, a huge, muscular man serving a life sentence for murder. Not only was Robertson nearly twice Dillard's weight, but he had earned his nickname through his habit of violently raping other prisoners.

Before the end of the day, the inevitable occurred: Robertson beat Dillard into submission and sodomized him. For the next two days, Dillard was raped repeatedly, until finally his cell door was opened and he ran out, refusing to return. A correctional officer who worked on the unit later told the *Los Angeles Times*: AEveryone knew about Robertson. He had raped inmates before and he's raped inmates since.<sup>413</sup> Indeed, according to documents submitted at a California legislative hearing on abuses at Corcoran, Robertson had committed more than a dozen rapes inside Corcoran and other prisons.<sup>414</sup> By placing Dillard in a cell with Robertson, the guards were setting him up for punishment.

Whether as a purposeful act or through mere negligence prisoners are all too often placed together with cellmates who rape them. A Connecticut prisoner told Human Rights Watch how he too was raped by a cellmate with a history of perpetrating rape:

[I] was sent to the orientation block to be cellmate with another prisoner already occupying a double cell. I did not know at the time that I was to share a double cell with him, that he was a known rapist in the prison . . . I must point out that only a month and a half prior, he was accused of raping another man. On my fourth day of sharing the cell, I was ambushed and viciously raped by him. After being raped, I remained in shock and paralyzed in thought for two days until I was able to muster the courage to report it, this, the most dreadful and horrifying experience of my life.<sup>415</sup>

The pressures of overcrowding facing so many prisons today means that double-celling is much more common than in the past. Often with two men being placed in a cell designed for single occupancy. While little care is taken to select compatible cellmates. Numerous prisoners told Human Rights Watch of being celled together with men who were much larger and stronger than them, had a history of violence, were racially antagonistic, openly threatening, or otherwise clearly incompatible. In such circumstances, rape is no surprise.

### **Understaffing and the Failure to Prevent**

*The greatest preventive measure [against rape] is posting staff, monitoring areas that are high risk for assault. The reality however, is that funding for prison administration doesn't provide for adequate patrolling . . . Prisoners are pretty much left on their own.*

CA Virginia inmate.<sup>416</sup>

*You know, when you look at the low numbers of staff around. Who really owns these prison?*



CHigh-level state prison administrator who prefers to remain anonymous.<sup>417</sup>

Another casualty of the enormous growth of the country's prison population is adequate staffing and supervision of inmates. The consequences with regard to rape are obvious. Rape occurs most easily when there is no prison staff around to see or hear it. Particularly at night, prisoners have told Human Rights Watch, they are often left alone and unsupervised in their housing areas. Several inmates have reported to Human Rights Watch that they yelled for help when they were attacked, to no avail. Although correctional staff are generally supposed to make rounds at fifteen minute intervals, they do not always follow this schedule. Moreover, they often walk by prisoners' cells without making an effort to see what is happening within them.

Texas, one of the largest prison systems in the countryCand one in which rape is widespreadCis known to be seriously understaffed. It is short an estimated 2,500 guards, what a high official in the prison guards' union characterizes as a staffing crisis.<sup>418</sup> Prison attrition statistics reportedly show that about one in five guards quit over the course of 2000.

Paradoxically, lower numbers of correctional staff can lead to more ineffective monitoring by existing staff. Instead of redoubling their efforts to make up for their insufficient numbers, they are more likely to remain as much as possible outside of prisoners' living areas, because fewer staff makes close monitoring more dangerous to those employees who do make the rounds of housing units. Being at a disadvantage, they also have a stronger incentive to pacifyCrather than challengeCthe more dangerous prisoners who may be exploiting others.

Poor design, especially common in older prisons, exacerbates the problem of understaffing. Blind spots and other areas that are difficult to monitor offer inmates unsupervised places in which to commit abuses. Explained one Florida inmate: ARapes occur because the lack of observation make it possible. Prisons have too few guards and too many blind spots.@<sup>419</sup>

### **Inadequate Response to Complaints of Rape**

An absolutely central problem with regard to sexual abuse in prison, emphasized by inmate after inmate, is the inadequateCand, in many instances, callous and irresponsibleCresponse of correctional staff to complaints of rape. When an inmate informs an officer that he has been threatened with rape or, even worse, actually assaulted, it is crucial that his complaint be met with a rapid and effective response. Most obviously, he should be brought somewhere where his safety is protected and where he can explain his complaint in a confidential manner. If the rape has already occurred, he should be taken for whatever medical care may be needed andCa step that is crucial for any potential criminal prosecutionCphysical evidence of rape can be collected.

But from the reports Human Rights Watch has received, such a response is uncommon. Typical of inmate accounts is this one, from an inmate who was compelled to identify his rapist in front of numerous others and then returned back to the same unit:

Lt. B.W. had me identify the assailant in front of approximately 20 other inmates . . . which immediately put my safety & life in danger as a snitch for telling on the other inmate who sexually assaulted me . . . the Prison officials trying to Place Me Back in Population after I identified the assailant in front of 20 inmates clearly placed my life in danger Because of the snitch concept.<sup>420</sup>

Such actions demonstrate to prisoners, in a very effective way, that it is unwise to report rape.

A blatant display of disbelief is another improper response that numerous inmates have described. One prisoner, who claimed to have been raped several times, said that officers refused to take his complaints serious, telling him, "no way you're not that good of a catch."<sup>421</sup> Frequently, correctional staff intimate that any sexual contact that may have occurred was consensual. A Texas inmate said that after he reported that he had been raped: "I was pulled out and seen by Mrs. P, Capt. R, and Major H. I told my complaint and Mrs. P said that I was never raped that I just gave it up."<sup>422</sup> Significantly, consensual sex is a rules violation in all prison systems, leaving the complaining inmate with the possibility of facing disciplinary sanctions.

Staff allegations of consensual sex are frequently combined with allegations that the complaining prisoner is gay, the implication being that gay inmates invite sex. A Florida inmate told Human Rights Watch: "I have been sexually assaulted twice since being incarcerated. Both times the staff refused to do anything except to lock me up and make accusations that I'm homosexual."<sup>423</sup>

A Texas inmate who was raped by numerous other prisoners over a long period of time experienced similar treatment by correctional staff when he tried to obtain their assistance:

Defendant J.M., a security officer with the rank of sergeant, came to investigate the series of latest allegations. Defendant J.M. refused to interview the inmate witnesses and told plaintiff that he was lying about being sexually abused. After plaintiff vehemently protested that he was being truthful, defendant J.M. made comments that plaintiff "must be gay for letting them make you suck dick."<sup>424</sup>

As these accounts suggest, gay inmates, or those perceived as gay, often face great difficulties in securing relief from abuse. Unless they show obvious physical injury, their complaints tend to be ignored and their requests for protection denied. Prison officials are particularly likely to assume consent in sexual acts involving a gay inmate.<sup>425</sup> Although homosexuality is generally regarded as a factor supporting an inmate's claim to protective custody, many guards appear to believe that gay inmates are immune from rape—that when a gay inmate has sex with another man it is somehow by definition consensual. Moreover, some gay prisoners have told Human Rights Watch that the guards themselves make homophobic comments, further encouraging sexual harassment from other inmates.

Another common guard response is that the inmate should defend himself using physical force,

or even retaliate violently against the aggressors. ABe a man,@ guards urge. AStand up and fight.@<sup>426</sup> The suggestion is often meant wellCviolent retaliation may, in fact, be quite effective against sexual abuseCbut the advice nonetheless represents an abdication of responsibility. It is correctional staff who are responsible for protecting prisoners from violence, not prisoners themselves. Indeed, the use of force by inmates, even in self-defense, is a disciplinary offense.

Some correctional officers do respond to reports of sexual abuse, typically by moving the inmate to a place of safety, often to a holding cell or what is called the Atransit@ area of the prison. Sometimes a medical examination is conducted and sometimes an investigation into the incident is opened. The problem is that these steps rarely lead to adequate measures being taken against the perpetrator of abuse. Rather than internal disciplinary proceedings or external criminal prosecution, the solution is typically found in isolating the two parties. Either the rapist or, more commonly, the complaining inmate may be transferred to another prison. Serious investigation of abuses is all too rare. The basic procedures followed when a crime is committed outside of prisonCinvolving collection of physical evidence, interviews with witnesses, interrogation of suspectsCare much less likely to be employed when the crime involves inmates.

### **Failure to Prosecute**

*I have yet to hear of an inmate being charged in court with sexual assault of an inmate. Have you? If just one was found guilty, got more time, things would change.*

CA Nebraska prisoner.<sup>427</sup>

*As of this time I have almost 14 years in prison and have never heard of a prison rape case being prosecuted in court . . . I'm quite sure if a man committed a rape in prison and got 5 or 10 years time, prison rape would decline.*

CA Ohio prisoner.<sup>428</sup>

Human Rights Watch surveyed both correctional departments and prisoners themselves regarding whether rapists faced criminal prosecution. The responseCor more accurately, lack of responseCwas instructive. Although corrections authorities generally stated that they referred all or some cases for prosecution by outside authorities, they had little information regarding the results of such referrals.<sup>429</sup> Prisoners were much more blunt: they uniformly agreed that criminal prosecution of rapists never occurs.

Judging solely by the direct accounts of rape we have received, criminal prosecution of prisoner-on-prisoner rape is extremely rare. Of the well over 100 rapes reported to Human Rights Watch, not a single one led to the criminal prosecution of the perpetrators. Even the most violent rapes, and those in which the victim pushed strongly for outside intervention, were ignored by the criminal justice system. Unlike rape in the outside community, rape in prison is a crime the perpetrator can commit without fear of spending additional time in prison.

The following letter, from an official with the Minnesota Department of Corrections, suggests just how rare such prosecutions are. Questioned in 1997 as to specific instances in which prisoners had been prosecuted for raping other prisoners, he cited a case that occurred twelve years previously:

You also asked if I was aware of any cases in which perpetrators of inmate-on-inmate sexual assault have been criminally prosecuted. I spoke with staff in our Office of Special Investigations and they informed me of one such case in September 1985. An inmate was charged and pled guilty to criminal sexual conduct in the third degree. He received a sentence of 1 year and 1 day to be served consecutively to his original incarceration offense.<sup>430</sup>

Although this response clearly indicates that rape prosecutions are rare in Minnesota, it is worth noting that almost all other state corrections department did not bring up *any* cases in which a perpetrator of rape in prison was prosecuted for the crime. Several said that they simply did not follow the progress of such cases.<sup>431</sup> The Missouri correctional authorities told Human Rights Watch in mid-1998 that three cases in the category AForcible Sexual Misconduct@were submitted for prosecution in 1996, two of which had been refused by the prosecutor and one of which was still pending. They noted, in addition, that there were no criminal convictions stemming from inmate-on-inmate rape or sexual abuse during the past two years.

The case of M.R., the Texas inmate whose case was described in chapter V, is a particularly egregious example of the failure to criminally prosecute rape in prison. Not only was M.R. raped repeatedly, the last time in full view of other inmates, but he was nearly killed by the rapist, receiving a severe concussion, broken bones, and scalp lacerations. Desperate to see the man prosecuted, M.R. wrote both the local district attorney and sheriff explaining his strong desire to press charges. He even filed a grievance against the Texas correctional authorities requesting their help in securing the criminal prosecution of the rapist. None of his efforts made a difference: the prosecution was never instituted.

Why are criminal prosecutions of inmate-on-inmate rape so rare? First, it is obvious that the severe underreporting of cases of abuse means that only a small minority of rapes are known to prison authorities, let alone to anyone outside the prison. Second, the failure of prison authorities to react appropriately to complaints of sexual abuse—including collecting physical evidence of rape—and to properly investigate such complaints means that the necessary fact-finding to support a criminal prosecution is lacking. Since local police do not patrol prisons, they rely on correctional authorities to gather the proof of crime. But another crucial problem is the low priority that local prosecutors place on prosecuting prison abuses. Although local prosecutors are nominally responsible for prosecuting criminal acts that occur in prisons, they are unlikely to consider prisoners part of their real constituency. Prisoners have no political power of their own, and impunity for abuses against prisoners does not directly threaten the public outside of prison. Since many state prosecutors are elected officials, these factors may be decisive in leading them to ignore prison abuses.

## Internal Administrative Penalties

M.R., the Texas prisoner who was nearly killed by his rapist, received another shock when he found out that the man was punished for the attack by spending a total of fifteen days in disciplinary segregation. Judging by the reports received by Human Rights Watch, however, the punishment meted out against M.R.'s rapist is only unusual in that it was meted out at all, not in that it was lenient. Since it is rare for prison authorities to conduct the investigation necessary to make a finding of rape, perpetrators of rape facing disciplinary proceedings are usually charged with a lesser offense such as disorderly conduct. The following account is typical:

[While I was in a temporary cell], officers allowed another inmate who was not assigned to my cell to enter and stay in my cell for two days with me. This was two days of living hell in which he raped and abused my body. He threatened to kill me if I let officials know. However, I began kicking the cell door anyway after the second day and officials came to my aid. I informed officials of what had transpired the previous two days, but it was logged that I merely *alleged* that I had been sexually assaulted and raped. The inmate was charged only with the disciplinary offense of threatening me, he got away with the sexual assaults *C* a much more serious offense *C* unpunished.<sup>432</sup>

Perpetrators may spend a week or two, or even a month, in *the hole*, rarely longer. Needless to say, when they return to the general prison population they may be primed for revenge.

## The Failure of Mechanisms of Legal Redress

*[L]awyers are, and with reason, terribly skeptical about the merits of prisoners' civil rights suits, most of which are indeed hoked up and frivolous.*

*C*Chief Judge Richard Posner, U.S. Court of Appeals for the Seventh Circuit.<sup>433</sup>

*Prisons are necessarily dangerous places; they house society's most antisocial and violent people in close proximity with one another. Regrettably, *A*[s]ome level of brutality and sexual aggression among [prisoners] is inevitable no matter what the guards do . . . unless all prisoners are locked in their cells 24 hours a day and sedated.*@**

*C*Justice Clarence Thomas, U.S. Supreme Court<sup>434</sup>

Like the public, many federal judges appear to view prisoners' legal claims with an extremely cynical eye. Either they disbelieve prisoners' complaints of abuse, preferring to focus their concern on the constraints under which correctional authorities operate, or they seem resigned to tolerating prison violence and exploitation. Not all federal judges are so insensitive to prison abuses *C*indeed, a few worthy efforts have been made to put a stop to prisoner-on-prisoner sexual abuse, including the rulings in *LaMarca v. Turner* and *Redmond v. County of San Diego* *C*but it is fair to say that the courts have not proven to be an effective champion of the sexually abused inmate.<sup>435</sup>

As described in chapter III, prisoners seeking recourse for violations of their constitutional rights can file a civil action in federal court. Especially since the passage of the Prison Litigation Reform Act (PLRA), however, the obstacles to such cases are daunting.

Despite the paucity of lawyers willing to litigate such cases, some inmates do nonetheless file suit against the prison authorities in the aftermath of rape. They typically assert that the authorities' failure to take steps to protect them from abuse violates the prohibition on cruel and unusual punishments contained in the Eighth Amendment to the U.S. Constitution. All too often, such cases are dismissed in the early stages of litigation, with some judges going out of their way to excuse the actions of prison officials.

The reasoning behind the decision in *Chandler v. Jones*, although the court's comments were more candid than most, is typical. In dismissing the case, which involved an inmate who was sexually pressured and harassed after being transferred to a dangerous housing unit, the court explained that "sexual harassment of inmates in prisons would appear to be a fact of life."<sup>436</sup> Even while acknowledging the widespread nature of the problem, courts have been extremely reluctant to hold prison officials responsible for it. Their caution may, to some extent, reflect their belief that crucial policy and budgetary decisions affecting prison conditions are made elsewhere, and that guards and other officials should not be blamed for the predictable abuses that result.<sup>437</sup> By such reasoning, however, the courts have ensured near-complete impunity for prisoner-on-prisoner sexual abuse. This tendency is strongly reinforced by the requirement in such cases that prison officials have "actual knowledge" of the problem, allowing courts to dismiss even those cases in which the risk of rape would be obvious to any reasonable person in the officials' position.

Finally, the rare case that does survive to reach a jury typically finds the inmate plaintiff before an unreceptive audience. Consider, for example, the case of *Butler v. Dowd*, in which the jury found that three young inmates had been brutally raped due to prison officials' deliberate indifference, but only awarded the plaintiffs the sum of one dollar each in nominal damages.<sup>438</sup> Or *James v. Tilghman*, in which the jury found that the inmate plaintiff had been raped due to the defendants' negligence, but awarded him nothing—neither compensatory nor punitive damages.<sup>439</sup> In many other cases, moreover, juries have found in favor of the defendants despite compelling evidence to the contrary. Even the well known case of *Farmer v. Brennan*, in which the transsexual victim of prisoner-on-prisoner rape prevailed before the U.S. Supreme Court, resulted in an unfavorable decision on remand to the district court.

## CASE HISTORY OF W.H.

### W.H.

When Human Rights Watch interviewed W.H., a young African American inmate with thick glasses, he was held in one of the Texas prison system's administrative segregation units. With prisoners locked twenty-three hours per day in their cells under an ultra-high security regime, the ad-seg unit is designed for the "worst of the worst": those whose violent temperaments and uncontrollable behavior make them unfit for normal prison life. W.H., a first offender incarcerated for burglary, hardly fit this model; his small size (5'4" and 126 pounds) and softspoken demeanor made the ad-seg classification even more puzzling.

Yet W.H. admitted that he was facing criminal charges for assault on a public servant: in early 1997, in another prison, he had kicked a female administrative technician. The circumstances of the crime explain much about his current situation and past troubles.

W.H. told Human Rights Watch that he was violently raped by several prisoners, including his cellmate, over a five-week period in late 1996. The rapes occurred not long after he was transferred out of a safekeeping wing where he had been held since his entry into the Texas prison system two years previously. Gang members living in the wing he was placed on began to threaten him soon after his arrival there, telling him, "You gonna ride."<sup>440</sup> Within two weeks, W.H.'s situation fell apart. As W.H. described in a grievance: "Gang members from the Rollin Sixty Crips has since the 10th day of Nov 1996 untill the 13th day of Nov 1996 forced them selves upon me to perform homeosexual acts with them . . ."<sup>441</sup> On November 13, the gang members badly beat W.H.; he was then temporarily moved to another wing.

Later that month, at a classification hearing to decide where W.H. would be housed, W.H. described the assaults and his fear for his life. The classification committee nonetheless decided to place him with the same prisoners who had previously beaten and sexually assaulted him. On his way back to the cellblock, W.H. told Human Rights Watch, he climbed a barred gate to escape being locked back in with inmates who he believed were preparing to victimize him. The warden decided to transfer him to another wing, but W.H. refused this housing assignment as well. Because of this disciplinary infraction, he received fifteen days' punitive segregation. On his release from segregation, W.H. again refused to accept assignment back to regular housing, but the sergeant reportedly told him that if he would not go to his cell voluntarily he would be dragged there. He agreed to go.

On December 6, his first day back in the cellblock, W.H. filed an emergency grievance. It concluded with the plea: "I request that I be placed in a place where I will be protected from the crule and unusal punishment that will be subject if I am left in the presense of these and other members of the Rollin Sixty Crips."

The first rape occurred that evening, W.H. told Human Rights Watch. Less than an hour after

he was placed in his cell, a gang member. A larger, stronger prisoner was moved in with him. The dude was crazy. He talked about killing, tried to scare me, related W.H.<sup>442</sup> The unit was on lockdown status, with prisoners supposed to be locked in their cells, but they had a method of getting in and out of cells by sticking paper in the lock before the cell door closed. At about 3:00 p.m., two prisoners entered W.H.'s cell and, together with W.H.'s new cellmate, anally raped W.H.

At dinner, W.H. surreptitiously reported what had happened to him to an officer, but the officer took no action. He didn't care, said W.H. They're lazy; they don't want to deal with the paperwork. That night, at about 1 a.m., W.H. was raped again, this time by his cellmate and an inmate from the adjoining cell. Both prisoners belonged to the Rolling Sixty Crips.

The next day, W.H. said, his cellmate raped him again. About ten minutes after the rape, a couple of correctional officers came by on their rounds to check the locks for paper. When they opened the door to W.H.'s cell, he pushed his way out. The officers knocked him to the ground and then brought him to detention, where he reported that he had been raped.

W.H. was brought to the prison infirmary to be examined. After looking at him the nurses had him sent to an outside hospital where medical tests were done. When Human Rights Watch interviewed him, nearly two years after the rapes, W.H. said he had never received the results of those tests.

The next day, a woman officer from the Internal Affairs Department (IAD) interviewed him. W.H. signed an affidavit describing the incidents that she kept; he told Human Rights Watch that he never received a copy of it. The officer asked if he wanted to file criminal charges against the perpetrators and he said yes. But he claims that no one from IAD ever contacted him again and as far as he knows charges were never filed.

W.H. was kept in segregation until his January 2, 1997 classification hearing. There he was denied safekeeping. At first, W.H. claims, the classification committee suggested that he be placed in administrative segregation, where he would be held in a one-man cell. They could tell that was what I wanted, said W.H.. So the warden scratched out ad-seg and wrote in close custody general population. I flipped out.<sup>443</sup> That was when W.H. kicked the administrative technician, he told Human Rights Watch knowing that this violent act would guarantee that he was kept locked up in segregation.

For W.H., breaking prison rules has become a habit. When Human Rights Watch interviewed him, he had spent over a year and a half in segregation. I catch [disciplinary] cases purposely. I've been caught with contraband like extra sheets. I don't want to leave this unit. I'm going to do all my time here.<sup>444</sup> After the experiences that he has had in prison, safety is everything for W.H.; restrictive conditions are to be greatly desired. Unfortunately for him, confinement in administrative segregation carries with it a loss of good time credits. When W.H. is released, he will have served nearly every day of his seven year sentence for burglary, having accrued none of the time reductions due normal inmates.



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1. Letter from A.H. to Human Rights Watch, August 30, 1996. In this excerpt, as in other excerpts from prisoners' letters included in this report, the author's idiosyncracies of spelling and grammar have been retained. In addition, prisoners' names and other identifying facts have been withheld to protect their privacy.

2. See Human Rights Watch, *All Too Familiar: Sexual Abuse of Women in U.S. State Prisons* (New York: Human Rights Watch, 1996); Human Rights Watch, "United States: Nowhere to Hide: Retaliation Against Women in Michigan State Prisons," *A Human Rights Watch Short Report*, vol. 10, no. 2, September 1998.

3. There is little published research on the topic of female prisoner-on-prisoner sexual abuse. A 1996 study that covered both men and women prisoners found a much lower rate of coerced sex among women than men. See Cindy Struckman-Johnson et al., "Sexual Coercion Reported by Men and Women in Prison," *Journal of Sex Research*, vol. 33, no. 1 (1996), p. 75. The most recent published examination of the topic describes instances of sexual abuse inflicted on or witnessed by a woman who spent five years in prison. It finds that sexual pressuring and harassment among women prisoners to be more common than actual sexual assault. See Leanne Fiftal Alarid, "Sexual Assault and Coercion among Incarcerated Women Prisoners: Excerpts from Prison Letters," *The Prison Journal*, vol. 80, no. 4 (2000), p. 391.

4. Prisons, which generally hold prisoners after their conviction, are operated by state and federal authorities; jails, which generally hold prisoners who are awaiting trial or who have received sentences of less than one year, are operated by local (county and city) authorities. For a more comprehensive description of the structure of incarceration in the United States, see the Background chapter.

5. See Alan J. Davis, "Sexual Assaults in the Philadelphia Prison System and Sheriff's Vans," *Transaction*, vol. 6, no. 2 (December 1968), pp. 8-16 (concluding that some 3 percent of men who passed through the Philadelphia jails were sexually assaulted); Wilbert Rideau, "The Sexual Jungle," in Wilbert Rideau and Ron Wikberg, eds., *Life Sentences: Rage and Survival Behind Bars* (New York: Times Books, 1992), pp. 90-91; see also Robert A. Martin, "Gang-Rape in D.C. Jail," in Pamela Portwood et al., eds., *Rebirth of Power: Overcoming the Effects of Sexual Abuse Through the Experiences of Others* (Racine, Wisconsin: Mother Courage Press, 1987); *Gregory v. Shelby*, 220 F. 3d 433 (6th Cir. 2000) (jail inmate who died as a result of injuries sustained during violent sexual abuse by another inmate). But see Daniel Lockwood, *Prison Sexual Violence* (New York: Elsevier, 1980), p. 25, who found much less sexual aggression among inmates in New York jails than in state prisons.

6. See Clemens Bartollas, Stuart J. Miller, and Simon Dinitz, "The 'Booty Bandit': A Social Role in a Juvenile Institution," *Journal of Homosexuality*, vol. 1, no. 2 (1974), p. 203.

7. A Memorandum in Support of the United States' Motion for a Preliminary Injunction Regarding

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Conditions of Confinement at the Jena Juvenile Justice Center,@ *United States v. Louisiana*, Civil No. 98-947-B-1, filed March 30, 2000.

8.A Kenyan human rights group, for example, included the following description in its report on prisons in that country:

[O]ne respondent reported an incident in which nine male juveniles were so badly sodomised by adult prisoners that their rectums protruded. . . . Similarly it was reported that first offenders in Machakos prison are preyed upon by older inmates who will even resort to rape if the younger inmates refuse to submit. Other young inmates engage in homosexual relations with older inmates in exchange for protection from the attentions of other prisoners.

Kenya Human Rights Commission, *A Death Sentence: Prison Conditions in Kenya* (Nairobi: Kenya Human Rights Commission, 1996), pp. 76-77. See also Moscow Center for Prison Reform, *In Search of a Solution: Crime Criminal Policy and Prison Facilities in the Former Soviet Union* (Moscow: Human Rights Publishers, 1996), p. 12; Observatoire international des prisons, *Le guide du prisonnier* (Paris: Les Editions Ouvrières, 1996), p. 139.

The most comprehensive analyses we have found of prisoner-on-prisoner rape outside of the United States are included in Daniel Welzer-Lang et al., *Sexualités et violences en prison* (Lyon: Aleas Editeur, 1996) (French prisons), and David Heilpern, *Fear or Favour* C*Sexual Assault on Young Prisoners* (New South Wales: Southern Cross University Press, 1998) (concluding that one in four male prisoners aged 18-25 is sexually assaulted in prisons in New South Wales, Australia). Surprisingly, a recent British study of inmate victimization made no reference to the issue. See Ian O'Donnell and Kimmet Edgar, *Bullying in Prisons* (Oxford: Centre for Criminological Research, University of Oxford, 1998).

Previous Human Rights Watch prison reports touching on the problem of rape include: Human Rights Watch, *Behind Bars in Brazil* (New York: Human Rights Watch, 1998), pp. 117-18; Human Rights Watch/Americas (now the Americas Division of Human Rights Watch), *Punishment Before Trial: Prison Conditions in Venezuela* (New York: Human Rights Watch, 1997), pp. 54-55; Africa Watch (now the Africa Division of Human Rights Watch), *Prison Conditions in South Africa* (New York: Human Rights Watch, 1994), p. 46; Helsinki Watch (now the Europe and Central Asia Division of Human Rights Watch), *Prison Conditions in Czechoslovakia* (New York: Human Rights Watch, 1989), pp. 31-33.

9. See, for example, Heilpern, *Fear or Favour* (finding that gay prisoners are disproportionately subject to rape).

10. Human Rights Watch interview, Texas, March 1999.

11. Deposition of S.M., *Ruiz v. Scott*, Civil Action No. H-78-987, January 20, 1999.

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- 12.Human Rights Watch interview, Texas, March 1999.
  - 13.S.M. said he had some problems with cellmates who threatened him, but was never raped during this period.
  - 14.Human Rights Watch interview, Texas, March 1999.
  - 15.Deposition of S.M., *Ruiz v. Scott*, Civil Action No. H-78-987, January 20, 1999, p. 40.
  - 16.Human Rights Watch interview, Texas, March 1999.
  - 17.Ibid.
  - 18.Ibid.
  - 19.Deposition of S.M., *Ruiz v. Scott*, Civil Action No. H-78-987, January 20, 1999, pp. 83-84.
  - 20.Human Rights Watch interview, Texas, March 1999.
  - 21.Ibid.
  - 22.Letter to Human Rights Watch, October 30, 1996.
  - 23.Human Rights Watch interview, October 1998.
  - 24.Human Rights Watch interview, October 1998.
  - 25.Ibid. ACamp@ is prison slang for prison; Aboss@ is slang for correctional officer; Aho@ is slang for prostitute (whore).
  - 26.Memorandum Opinion and Order of Dismissal, *R. v. Scott*, Civil Action filed July 23, 1996, p. 6.
  - 27.Ibid.
  - 28.Ibid.
  - 29.Kathleen Maguire and Ann L. Pastore, eds, Bureau of Justice Statistics, U.S. Department of Justice, *Sourcebook of Criminal Justice Statistics 1998* (Washington, D.C.: USGPO, 1999), pp. 481, 497.
  - 30.See ANation's Prison Population Climbs to Over 2 Million,@Reuters, August 10, 2000. According to the Justice Policy Institute, an estimated 1,983,084 adults were behind bars on December 31, 1999, a figure expected to rise to 2,073,969 by the end of the year 2000. Justice Policy Institute, AThe Punishing Decade: Prison and Jail Estimates at the Millennium,@1999. This figure does not include the additional 100,000 juveniles that were in detention. See Maguire and Pastore, *Sourcebook*, p. 479.

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31. As far as is known, China has the second largest inmate population, with an official figure of 1.6 million prisoners. While this number is likely to be a serious underestimate, it should be noted that China's resident population is many times that of the United States, and therefore its rate of incarceration is much lower. The only countries whose incarceration rates compare to the U.S. rate are Rwanda, where the 1994 genocide and subsequent incarceration of some 130,000 suspects have resulted in an incarceration rate of roughly 1,000 to 2,000 prisoners per 100,000 residents; Russia, with a rate of roughly 740 per 100,000; Kazakhstan, with a rate of roughly 500 per 100,000, and Belarus, with a rate of roughly 600 per 100,000. Statistics on file at Human Rights Watch; see also André Kuhn, "Incarceration Rates Across the World," *Overcrowded Times*, vol. 10, no. 2 (April 1999), p. 1.

32. U.S. Department of State, Initial Report of the United States of America to the Committee Against Torture (Part I. General Information), October 15, 1999 (hereinafter DOS, Torture Report).

33. Three strikes, you're out laws (the phrase is borrowed from baseball) have been instituted in several states, including California. Such laws impose mandatory life sentences without parole on habitual offenders—generally persons with three felony convictions. Enormously popular with the public, they have been criticized for eliminating judicial discretion in sentencing, essentially shifting power from judges to prosecutors. See, for example, Andy Furillo, "Sentencing Discretion May Return to Courts," *Sacramento Bee*, April 2, 1996.

34. See Kuhn, "Incarceration Rates . . ."

35. See Maguire and Pastore, *Sourcebook*, p. 487 (showing that as of December 31, 1997, at least 3 percent of state prisoners were held in local jails because of prison overcrowding).

36. See International Covenant of Civil and Political Rights (ICCPR), art. 10(2), but note that in ratifying the ICCPR the United States included a specific reservation to this provision; Standard Minimum Rules for the Treatment of Prisoners, art. 8(b). For further discussion of international standards and the U.S. reservations to them, see chapter III, below.

37. DOS, Torture Report.

38. Another 12,347 persons were in contract facilities, including community corrections centers or halfway houses. *Ibid.*

39. See California Department of Corrections, "CDC Facts," October 1999. Available: <http://www.cdc.state.ca.us/factsht.htm> (December 1999). Texas Department of Criminal Justice, Institutional Division, "Divisional Overview," December 1999 (available at <http://www.tdcj.state.tx.us/id/id-home.htm> (December 1999)).

40. DOS, Torture Report.

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41. Maguire and Pastore, *Sourcebook*, p. 79; DOS Torture Report. A Design capacity@ refers to the number of inmates that planners or architects intended the facility to house, while Rated capacity@ refers to the number of beds assigned by a rating official. Among the most overcrowded prison systems, in 1995, were those of California, Hawaii, Indiana, Iowa, and Ohio.

42. In six states, however, prisons and jails form an integrated system. The states are Connecticut, Rhode Island, Vermont, Delaware, Alaska and Hawaii. Maguire and Pastore, *Sourcebook*, p. 492.

43. Nationally, as of 1998, jails had an overall capacity of 612,780 inmates and were at 97 percent of capacity. Maguire and Pastore, *Sourcebook*, p. 481. These overall numbers, however, mask the fact that numerous jails are jammed far beyond their capacity. See, for example, *Mangan v. Christian County*, Case No. 6-99-03373-JCE, complaint filed October 6, 1999, describing overcrowding and other abuses.

44. Maguire and Pastore, *Sourcebook*, p. 82. See also Eric Bates, A Private Prisons,@ *The Nation*, January 5, 1998, which states that private prisons hold an estimated 77,500 prisoners.

45. See, for example, Human Rights Watch, *World Report 2000* (New York: Human Rights Watch, 1999), p. 394, describing violence and abuse at privately-operated prison facilities.

46. Justice Policy Institute, A The Punishing Decade . . . @, Maguire and Pastore, *Sourcebook*, p. 4 (giving 1994 figure of \$34.9 billion).

47. Camille G. Camp and George M. Camp, *The Corrections Yearbook 1998* (Middletown, Connecticut: Criminal Justice Institute, 1998), p. 13 (data as of January 1998 showing male inmates making up 93.6 percent of the national inmate population).

48. As of mid-1997, some 13 percent of the U.S. resident population identified themselves as black, while some 11 percent were Hispanic. DOS, Torture Report.

49. Anthony Lewis, A Punishing the Country,@ *New York Times*, December 21, 1999.

50. See *World Report 2000*, p. 394.

51. See, for example, Connie L. Neeley, A Addressing the Needs of Elderly Offenders,@ *Corrections Today*, August 1997; Robert W. Stock, A Inside Prison, Too, a Population Is Aging,@ *New York Times*, January 18, 1996 (citing national survey finding that 6 percent of U.S. inmates were 55 and older).

52. Between 1992 and 1998, at least forty U.S. states adopted legislation to facilitate the prosecution of juvenile offenders in adult courts, which typically means that they are detained in adult jails pending trial. Human Rights Watch, *No Minor Matter: Children in Maryland's Jails* (New York: Human Rights Watch, 1999), p. 16. The federal government's Office of Juvenile Justice and Delinquency Prevention

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(OJJDP) documented a 14 percent increase in the number of juveniles held in adult jails from 1985 to 1995. *OJJDP Annual Report* (Washington, D.C.: OJJDP, 1998), p. 44. For an analysis of what this means for juvenile offenders, see generally Margaret Talbot, "The Maximum Security Adolescent," *The New York Times Magazine*, September 10, 2000.

53. U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, *Correctional Populations in the United States, 1995* (Washington, D.C.: Bureau of Justice Statistics, 1997).

54. See, for example, Vincent Schiraldi and Jason Zeidenberg, "The Risks Juveniles Face When They Are Incarcerated With Adults," Justice Policy Institute, 1997.

55. Eileen Poe-Yamagata and Michael A. Jones, *And Justice for Some: Differential Treatment of Minority Youth in the Justice System* (Washington, D.C.: Youth Law Center, April 2000), p. 25 (available at <http://www.buildingblocksforyouth.org/justiceforsome/>).

56. National Institute of Corrections, "Offenders under Age 18 in State Adult Correctional Systems: A National Picture," 1995, p. 5.

57. See *World Report 2000*, p. 394.

58. *Ruiz v. Johnson*, 1999 U.S. Dist. LEXIS 2060, at 236-37 (March 1, 1999).

59. Marilyn D. McShane and Frank P. Williams III, eds., *Encyclopedia of American Prisons* (New York: Garland Publishing, Inc., 1996), p. 379.

60. *The Corrections Yearbook 1998*, pp. 30, 40.

61. Laura M. Maruschak and Allen J. Beck, "Medical Problems of Inmates, 1997," Bureau of Justice Statistics Special Report, January 2001, pp. 1, 4.

62. David E. Eichenthal and Laurel Blatchford, "Prison Crime in New York State," *Prison Journal*, vol. 77, no. 4, December 1997, pp. 458-59.

63. McShane and Williams, *Encyclopedia*, p. 213.

64. Cory Godwin, *Gangs in Prison: How to Set Up a Security-Threat Group Intelligence Unit* (Horsham, Pennsylvania: LRP Publications, 1999), p. 4.

65. McShane and Williams, *Encyclopedia*, p. 215. Human Rights Watch's communications with prisoners have suggested to us that gang activity pervades many prison systems.

66. McShane and Williams, *Encyclopedia*, p. 215.

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67. McShane and Williams, *Encyclopedia*, pp. 111-14, 379.

68. A number of prisoners who had been raped sent Human Rights Watch copies of letters that they had sent to local law enforcement officials reporting the crime. None of them resulted in a criminal investigation, let alone the filing of criminal charges. See also McShane and Williams, *Encyclopedia*, p. 299 (stating that "[a]s a practical matter, few prosecutions result from complaints made by prisoners"). As the *Encyclopedia* points out, the time and expense of prosecution deter most local officials, who have other competing priorities, from focusing on prison abuses.

69. McShane and Williams, *Encyclopedia*, p. 299. Of the 26,005 assaults that were reported to have been committed by inmates against other inmates during 1997, only 1,306 were referred for prosecution. *1998 Corrections Yearbook*, p. 40. It is likely that only a small fraction of this number were in fact prosecuted, although precise figures are not available.

70. Human Rights Watch, *World Report 2000*, p. 394.

71. McShane and Williams, *Encyclopedia*, p. 163. Accumulated good-time credits allow a prisoner to leave prison sooner than he otherwise would.

72. Different prison systems have different types of classification schemes with variations in terminology. For example, the Federal Bureau of Prisons has established five security levels: minimum, low, medium, high and administrative. Federal Bureau of Prisons, *State of the Bureau* (Washington, D.C.: U.S. Department of Justice, 1995), p. 67.

73. McShane and Williams, *Encyclopedia*, p. 377.

74. *Lee v. Washington*, 390 U.S. 333 (1968).

75. For example, a 1995 Department of Justice investigation of conditions at the Muscogee County Jail in the state of Georgia found that African American inmates were housed separately from white inmates there. Letter from Assistant Attorney General from Civil Rights Deval L. Patrick to Acting City Manager Iris Jessie, Columbus, Georgia, June 1, 1995. In 1997, a just-released California prisoner drew press attention to the striking degree to which that state's prisons were segregated by race. See Daniel B. Wood, "To Keep Peace, Prisons Allow Race to Rule," *Christian Science Monitor*, September 16, 1997 (describing how "nearly every activity—sleep, exercise, and meals—is determined by race"); Emanuel Parker, "White Former Con Says State Prison Practices Segregation," *Los Angeles Sentinel*, May 16, 1996.

A concurring opinion in the *Lee* case did, however, appear to leave the door open to some forms of racial categorization. It stated:

In joining the opinion of the Court, we wish to make explicit something that is left to be gathered only by implication from the Court's opinion. This is that prison authorities have the right, acting in good faith and in particularized circumstances, to take into

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account racial tensions in maintaining security, discipline, and good order in prisons and jails.

*Lee*, 390 U.S. at 335 (Black, J., Harlan J., and Stewart, J., concurring).

76. Camp and Camp, *Corrections Yearbook 1998*, p. 26.

77. *Ruiz* at 215 (stating that as of December 1, 1998, there were 2,592 safekeeping beds and 128 protective custody beds in the Texas prison system). An expert witness testifying on behalf of the plaintiffs in the *Ruiz* case asserted that these numbers were insufficient given the size of the Texas prison population.

78. *Palmigiano v. Garrahy*, 443 F. Supp. 956, 965 (D.R.I. 1977).

79. Under the Supreme Court's current interpretation of constitutional protections on due process, the changed conditions must impose an atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life. @ *Sandin v. Conner*, 115 S. Ct. 2293 (1995). This standard, which cuts back significantly on earlier protections, essentially grants prison officials full discretionary power in classifying inmates.

80. See, for example, McShane and Williams, *Encyclopedia*, p. 379; Seth Mydans, "Racial Tensions in Los Angeles Jails Ignite Inmate Violence," @ *New York Times*, February 6, 1995; Wood, "To Keep Peace . . ." @ Rick Bragg, "Unfathomable Crime, Unlikely Figure," @ *New York Times*, June 17, 1998 (quoting a spokesman for the Southern Poverty Law Center as saying, "The level of racism in prison is very high. The truth is, you may go in completely unracist and emerge ready to kill people who don't look like you." @)

81. Letter to Human Rights Watch from T.B., Texas, September 3, 1996.

82. Letter to Human Rights Watch from W.M., Texas, October 31, 1996.

83. Letter to Human Rights Watch from V.H., Arkansas, November 17, 1996.

84. See, for example, "Inmate Dies and 8 Are Hurt as Riot Erupts in California Prison," @ *New York Times*, February 24, 2000. This article, which described a riot involving some 200 inmates at California's Pelican Bay State Prison, quoted one prison official as saying, "It was black and Hispanic inmates fighting. We've had racial incidents in the past." @

85. "Ride" is Texas prison slang for paying protection to another prisoner; "turn them out" is slang for raping them.

86. Letter to Human Rights Watch from T.B., Texas, November 15, 1996.



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87.The act provides: A[n]o action shall be brought with respect to prison conditions under [42 U.S.C. ' ] 1983 . . . , or any other federal law, by a prisoner . . . until such administrative remedies as are available are exhausted.@ 42 U.S.C. ' 1997e(a).

88.Standard Minimum Rules for the Treatment of Prisoners, art. 55; Penal Reform International, *Making Standards Work* (The Hague: Penal Reform International, 1995), pp. 161-65.

89.In 1999, only about a quarter of state prisons and 5-7 percent of local jails were accredited with the ACA. In contrast, all of the facilities operated by the Federal Bureau of Prisons were accredited or in the process of receiving accreditation. Human Rights Watch telephone interview, Mike Shannon, assistant director for standards and accreditation, ACA, Lanham, Maryland, March 14, 2000.

90.In New York, for example, the Correctional Association of New York has statutory authority to visit state prisons.

91.Human Rights Watch interview, California, May 1998.

92.The Asoftie tank@is inmate slang for the separate housing area reserved for weak or vulnerable prisoners.

93.Ibid.

94.APlaintiffs Notice of Motion and Opposition to Defendant Motion for Summary Judgment,@*R.G. v. Haskett*, October 1, 1996.

95.Typical of this view were the words of a federal court in 1949:

This Court . . . is not prepared to establish itself as a Aco-administrator@of State prisons along with the duly appointed State officials . . . . [I]t is not the function of a Federal Court to assume the status of an appellate tribunal for the purpose of reviewing each and every act and decision of a State official.

*Siegel v. Ragen*, 88 F. Supp. 996 (D.C. Ill. 1949).

96.*Hudson v. McMillian*, 503 U.S. 1, 17 (1992) (Thomas, J., dissenting).

97.See, for example, *Estelle v. Gamble*, 429 U.S. 97 (1976); *Dothard v. Rawlinson*, 433 U.S. 321 (1977).

98.See, for example, Francis A. Allen, AThe Decline of the Rehabilitative Ideal in American Criminal Justice,@*Cleveland State Law Review*, Vol. 27, 1978, p. 147.

99.The criticisms of Supreme Court Justice Clarence ThomasCwho complained that prisons conditions rulings from the 1970s effectively Atransform federal judges into superintendents of prison conditions

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nationwide care emblematic of this attitude. *Farmer v. Brennan*, 511 U.S. 825, 839 (1994) (Thomas, J., concurring).

100. See, for example, Amnesty International, *United States of America: Florida Reintroduces Chain Gangs*, AMR 51/02/96, January 1996; Human Rights Watch, *Cold Storage: Super-Maximum Security Confinement in Indiana* (New York: Human Rights Watch, 1997), pp. 17-20 (describing national trend toward super-maximum security prisons); Amnesty International, *Rights for All. Cruelty in Control? The Stun Belt and Other Electro-Shock Equipment in Law Enforcement*, AMR 51/54/99, June 1999 (discussing the use of stun weapons in prisons and jails). An indicator of the strength of continuing public antipathy toward prisoners can be found on the website of the Florida Department of Corrections. The site includes the results of a public opinion poll on prison issues and a page called *Eight Misconceptions about Florida Prisons*. The poll concludes that 96 percent of Florida's public approve of requiring prisoners to do unpaid work and that 73 percent approve of the use of prison chain gangs. The misconceptions that the page forcefully dispels include the notion that prisoners are not made to work, that they are allowed cable television, and that prisons are air-conditioned. Available: <http://www.dc.state.fl.us/pub/annual/9798/myths.html> (October 1999).

101. In the mid-1990s, in particular, it seemed that politicians' outrage over inmate litigation knew no bounds. Ignoring real prison abuses, they publicized only the most factually absurd lawsuits, creating what one commentator described as the meta-narrative of the frivolous. Henry F. Fradella, *A Typology of the Frivolous: Varying Meanings of Frivolity in Section 1983 Prisoner Civil Rights Litigation*, *Prison Journal*, December 1998, p. 470. See, for example, Paula Boland, *Prisoners Deserve Punishment, Not Perks*, July 1996 (position paper by member of the California Assembly, complaining that inmates receive three meals a day, free medical, dental and vision care, free stationary, postage and free laundry services!), available: <http://www.calgop.scvcr/pb0796.htm> (September 1996); *Lance to Testify against Frivolous Inmate Lawsuits*, January 1996 (position paper by Idaho attorney general), available: <http://www.state.id.us/ag/middle/releases/0126friv.htm> (September 1996); Gregg Birnbaum, *Vacco wants restrictions on inmates' petty suits*, *New York Post*, October 19, 1995 (on attempts by New York Attorney General Dennis Vacco to impose filing fees on inmate lawsuits).

As generally portrayed in the media, inmate litigation was reduced to stories of prisoners who went to court over broken cookies and lukewarm soup. See, for example, Sandra Ann Harris, *Crime: Inmate Lawsuits Costly to Taxpayers*, *Detroit News*, October 23, 1995. Especial emphasis was placed on the cost to taxpayers of defending against frivolous lawsuits filed by inmate litigants. The NBC Nightly News reportedly aired a segment in 1996 on the *The Fleecing of America*, focusing on this issue, while the April 1996 issue of *Reader's Digest* contained a similar piece. D. Van Atta, *The Scandal of Prisoner Lawsuits*, *Reader's Digest*, April 1996, p. 65; Nat Hentoff, *Our Overprivileged Prisoners*, *Washington Post*, March 29, 1997. Unfortunately, stories of legitimate inmate lawsuits challenging horrendous conditions of incarceration, unchecked violence, and custodial sexual abuse rarely received such coverage.

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102. *See* 18 U.S.C.A. ' 3626.

103. The PLRA provision on filing fees provides that if a prisoner has brought three or more lawsuits that have been dismissed as frivolous, malicious, or as having failed to state a claim, that prisoner is barred from obtaining *in forma pauperis* (indigent) status, a prerequisite for the reduction of filing fees. As the courts have explained it, Congress enacted the PLRA with the principal purpose of deterring frivolous prison litigation by instituting economic costs for prisoners wishing to file civil claims. @ *Lyon v. Krol*, 127 F.3d 763, 764 (8th Cir. 1997). Yet it is clear to Human Rights Watch that numerous prison suits are dismissed as frivolous because prisoners lack legal skill and, in some case, because judges simply lack interest in their claims, not because the prisoners' claims actually lack merit. By imposing filing fees on prisoners who have no money to pay them, the provision has the effect of creating a class of poor prisoners for whom the courthouse door is closed.

104. *See Inmates of Suffolk County Jail v. Rouse*, 129 F.3d 649 (1st Cir. 1997); *Plyler v. Moore*, 100 F.3d 365 (4th Cir. 1996), *cert. denied*, 117 S. Ct. 2460 (1997); *Dougan v. Singletary*, (11th Cir. 1997); *Rivera v. Allin*, 144 F.3d 719 (11th Cir. 1998); *Wilson v. Yaklich*, 148 F.3d 596, 606 (6th Cir. 1998); *Gavin v. Branstad*, 122 F.3d 1081 (8th Cir. 1997).

105. Courts have relied upon other constitutional amendments to resolve a limited range of prison issues. Prominent among them is the Fourth Amendment prohibition against unreasonable searches and seizures, which has been interpreted as granting inmates a limited right to privacy. See, for example, *United States v. Hinckley*, 672 F. 2d 115 (D.C. Cir. 1982); *Frazier v. Ward*, 528 F. Supp. 80 (S.D.N.Y. 1981). The First Amendment, in addition, has been used in the prison context in cases involving religious freedom and free expression. See, for example, *O'Lone v. Estate of Shabazz*, 482 U.S. 342 (1987); *Pell v. Procunier*, 417 U.S. 817 (1974); *Cruz v. Beto*, 405 U.S. 319 (1972). All of these provisions, and the Eighth Amendment as well, are not directly applicable to the actions of state governments, but are instead applied to the states via the Fourteenth Amendment.

106. Because the Eighth Amendment bars cruel and unusual *punishment*, and because pretrial detainees are not supposed to be subject to any punishment at all, the courts have ruled that the Eighth Amendment is not directly applicable in cases involving pretrial detainees. Yet, in practice, the standards applied to pretrial detainees under the Fifth Amendment's Due Process Clause have followed those applied to convicted prisoners under the Eighth. See generally *Bell v. Wolfish*, 441 U.S. 520 (1979).

107. *Farmer*, 511 U.S. at 832 (internal quotations omitted).

108. *DeShaney v. Winnebago County Dept. of Social Services*, 489 U.S. 189, 199 (1989).

109. *Whitley v. Albers*, 475 U.S. 312, 319 (1986).

110. *Hudson v. McMillian*, 503 U.S. 1, 14 (1992).

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111. *Wilson v. Seiter*, 501 U.S. 294, 298 (1991).

112. *Hudson*, 503 U.S. at 10; *Whitley*, 475 U.S. at 320-21.

113. *Wilson*, 501 U.S. at 303. The Supreme Court did not define *deliberate indifference* in *Wilson*. In the 1994 *Farmer* decision, however, it ruled that prison officials must know of the risk and fail to take reasonable measures to prevent it.

114. See *Hudson v. Palmer*, 468 U.S. 517 (1984).

115. *Farmer*, 511 U.S. 825.

116. *Ibid.* at 834 (quoting *Rhodes v. Chapman*, 452 U.S. 337, 347 (1981)) (internal quotations omitted).

117. *Farmer*, 511 U.S. at 837.

118. See *Wilson v. Seiter*, 501 U.S. 294 (1991).

119. *Ibid.* at 311 (White, J., concurring in the judgment).

120. *Wilson*, 501 U.S. 294.

121. *Ibid.*

122. The requirement of *under color of state law* means that a state official must be using his or her authority as a state official when the violation occurs. A state official may still be acting under color of law even if the conduct violates state law. *Screws v. United States*, 325 U.S. 91, 109 (1945). In order to be actionable, the misuse of power must be made possible by the actor's authority under state law. *Ibid.*

123. Sections 241 and 242 are both general civil rights provisions, and their application is not limited to abuses within prisons. Title 18, United States Code, Section 241 provides, in relevant part: *A*[i]f two or more persons conspire to injure, oppress, threaten, or intimidate any person in any State . . . in the free exercise or enjoyment of any right or privilege secured to him [or her] by the Constitution or laws of the United States, or because of his [or her] having so exercise of the same . . . [t]hey shall be fined or imprisoned not more than ten years, . . . or both.<sup>@</sup>

Section 242 provides, in relevant part: *Whoever*, under color of law, statute, ordinance, regulation, or custom, willfully subjects any person in any State . . . to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States . . . shall be fined under this title or imprisoned not more than one year, or both; and if bodily injury results from

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the acts committed in violation of this section or if such acts include the use, the attempted use, or threatened use of a dangerous weapon, explosives, or fire, shall be fined under this title or imprisoned not more than ten years, or both; and if death results from the acts committed in violation of this section or if such acts include . . . aggravated sexual abuse, or an attempt to commit aggravated sexual abuse, . . . shall be fined under this title, or imprisoned for any term of years or for life, or both, or may be sentenced to death.@

124.*Screws*, 325 U.S. at 103 (18 U.S.C. Section 242); *United States v. Guest*, 383 U.S. 745, 760 (1966) (18 U.S.C. Section 241).

125.*Screws*, 325 U.S. at 101-03.

126.See Paul Hoffman, ¶The Feds, Lies and Videotape: The Need for an Effective Federal Role in Controlling Police Abuse in Urban America,@*Southern California Law Review*, Volume 66, p. 1522 (1993).

127.U.S. Department of State, Initial Report of the United States of America to the U.N. Committee Against Torture, October 15, 1999 (hereinafter DOS 1999 Torture Report). Available: [http://www.state.gov/www/global/human\\_rights/torture\\_toc99.html](http://www.state.gov/www/global/human_rights/torture_toc99.html) (December 1999).

128.42 U.S.C. Section 1997 *et seq.*

129.See, for example, *Canterino v. Wilson*, 538 F. Supp. 62 (W.D. Ky. 1982); Senate Reports Number 96-416, 96th Congress, Second Session (1980), *reprinted in* 1980 United States Code Congressional and Administrative News, pp. 787, 797.

130.The investigation itself must be triggered by a published report or information from a source with personal knowledge about allegations that constitutional rights are being violated.

131.*Ibid.*

132.*United States v. Michigan*, 868 F. Supp. 890 (W.D. Mich. 1994).

133.Courts prior to the Michigan decision repeatedly upheld DOJ requests to enter institutions and conduct investigations. See *U.S. v. County of Los Angeles*, 635 F. Supp. 588 (C.D. Cal. 1986); *U.S. v. County of Crittenden*, Civil Action No. JC89-141, 1990 WESTLAW 257949 (E.D. Ark. December 26, 1990).

134.Human Right Watch telephone interview, Mellie Nelson, Deputy Chief, Special Litigation Section, Civil Rights Division, Department of Justice, March 30, 2000.

135.Besides remedying abusive prison and jail conditions, the Special Litigation Section is also

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responsible for the enforcement of legal standards covering conditions in mental institutions, protecting clinics providing reproductive health services, and remedying patterns or practices of police misconduct.

136.As of March 2000, the section planned to hire eight additional staff attorneys. Human Right Watch telephone interview, Mellie Nelson, Department of Justice, March 30, 2000.

137.Human Right Watch telephone interview, Mellie Nelson, Department of Justice, March 30, 2000. The section also filed a consent decree for a case involving prisons and jails in the Northern Mariana Islands.

138.The Eleventh Amendment bars suits in federal court against a U.S. state as such, unless the state has waived its immunity. *Welch v. Texas Dept. of Highways and Public Transportation*, 483 U.S. 468, 472-473 (1987). In addition, Section 1983 grant of federal jurisdiction does not extend to suits against states or state officials acting in their official capacities. *Will v. Michigan Dept. of State Police*, 491 U.S. 58 (1989).

Cases involving conditions in federal prisons, where Section 1983 does not apply, are generally based on the precedent established by the case of *Bivens v. Six Unknown Federal Narcotic Agents*, 403 U.S. 388 (1971). In *Bivens*, the Supreme Court ruled that officials of the federal government may be held personally liable for actions undertaken in their official capacity.

139.See *Monroe v. Pape*, 365 U.S. 167 (1961). Section 1983 was initially passed to protect African Americans in the South from reprisals during Reconstruction. It was known as the Civil Rights Act (originally the Ku Klux Klan Act) of 1871 and was later recodified as 42 U.S.C. Sec. 1983. It provides: "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, or the District of Columbia, subjects or causes to be subjected, any citizen of the United States or any person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress."

140.*Cooper v. Pate*, 378 U.S. 546 (1964) (reinstating complaint of Muslim inmate denied permission to purchase religious publications).

141.Unlike lawyers in most other countries, U.S. lawyers may work on a contingency fee basis, typically taking a quarter to a third of any damages award won in a lawsuit. In essence, such lawyers are betting on the success of their clients' claims to damages. This practice allows many plaintiffs to obtain legal counsel who would otherwise be unable to afford it.

142.Section 504(a)(15) of the 1996 appropriations act for the Legal Services Corporation (LSC), Public Law 104-134, 110 Stat. 1321 (1996), prohibits the participation of LSC recipients in any litigation on behalf of prisoners. Not only does the law bar legal services lawyers from taking on new prison cases, its passage disrupted numerous ongoing court cases, such as a New Hampshire class

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action asserting that the state had relegated mentally ill prisoners to harsh high-security cells. Nina Bernstein, A2,000 Inmates Near a Cutoff of Legal Aid,@*New York Times*, November 25, 1995.

143. Class action litigation refers to cases in which an entire class of similarly situated plaintiffs, as opposed to a single plaintiff, files suit. The ACLU National Prison Project (NPP), based in Washington, D.C., is perhaps the best known of the organizations that specialize in inmate class action suits, having litigated some of the most important prison cases of the past few decades. Among its many critical interventions, the NPP represented the inmate plaintiff in argument before the Supreme Court in the case of *Farmer v. Brennan*, the first case in which the Court faced the issue of sexual abuse in prison. Some local ACLU affiliate offices also handle prison cases.

144. The situation of Prisoners' Legal Services, established in the wake of the brutal suppression of the inmate uprising at the prison of Attica, N.Y., is all too typical. In the past few years, the organization's funding has been cut; it has been forced to lay off staff, and its very survival has been threatened. At one point, its legal department consisted of little more than the executive director. See Clyde Haberman, AAttica's Ghost in the Shadow of Pataki Veto,@*New York Times*, July 28, 1998.

145. Consider, for example, the case of *Butler v. Dowd*, in which the jury found that three young inmates had been brutally raped due to prison officials' deliberate indifference, but only awarded the plaintiffs the sum of one dollar each in nominal damages. *Butler v. Dowd*, 979 F.2d 661 (1992).

146. Roger A. Hanson and Henry W.K. Daley, AChallenging the Conditions of Prisons and Jails: A Report on Section 1983 Litigation,@U.S. Department of Justice, February 1995 (providing data showing that 96 percent of prisoners proceed pro se).

147. Ibid.

148. For example, the landmark case of *Farmer v. Brennan*—the only prison rape case to be heard by the Supreme Court—was filed by an inmate acting pro se; legal counsel was not provided until the case was on appeal. Other precedents involving inmate pro se plaintiffs include: *Risley v. Hawk*, 918 F. Supp. 18 (D.D.C. 1996); *Jones v. Godinez*, 918 F. Supp. 1142 (N.D. Ill. 1995); *Blackmon v. Buckner*, 932 F. Supp. 1126 (S.D. Ind. 1996). More commonly, however, courts summarily dispose of cases filed by inmates via unpublished memorandum opinions. See, for example, *Collier v. Zimmerman*, 1988 WL 142788 (E.D. Pa. 1988) (dismissing complaint of rape as frivolous even though the plaintiff made several statements indicating that his claim was valid); *Ginn v. Gallagher*, 1994 U.S. Dist. LEXIS 16669 (E.D. Pa. 1994) (granting summary judgment for the defendants in case alleging prison rape); *Hunt v. Washington*, 1993 U.S. Dist. LEXIS 681 (N.D. Ill. 1993) (dismissing complaint of attempted rape).

149. Numerous prisoners have mailed Human Rights Watch their handwritten legal documents. Some of these legal briefs—meticulously drafted, complete with supporting affidavits, citing to all of the relevant

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legal precedents are twenty or thirty pages long. One wonders about the reception of such documents in the courts: particularly whether anyone takes the time to read and understand them.

150. Two important such resources are the *Jailhouse Lawyer's Manual*, published by Columbia University, and the *Prisoners' Self-Help Litigation Manual*. Columbia Human Rights Law Review, *A Jailhouse Lawyer's Manual*, 4th ed. (New York: Columbia University School of Law, 1996); John Boston and Daniel E. Manville, *Prisoners' Self-Help Litigation Manual*, 3rd ed. (New York: Oceana Publications, 1996).

151. Hanson and Daley, *Challenging the Conditions . . .* (stating that more than 94 percent of prisoner lawsuits are unsuccessful).

152. Typical of such cases is *Collier v. Zimmerman*, 1988 WL 142788 (E.D. Pa. 1988), in which the plaintiff alleged that he had been raped on two separate occasions by different inmates. The court acknowledged that the several of the plaintiff's statements indicated that he had a valid claim that the prison authorities might have wrongly failed to protect him from rape. It found the plaintiff's allegations lacking in the proper specificity, however, and thus dismissed the complaint.

Discussing such cases, a recent article notes that *frivolous* is not the same as *nonmeritorious*.<sup>15</sup> A claim could be dismissed as frivolous because some technical requirement of constitutional law was not met, but such a disposition is not necessarily a reflection on the merit or lack thereof of the substantive allegations raised in any given complaint.<sup>16</sup> Henry F. Fradella, *Typology of the Frivolous: Varying Meanings of Frivolity in Section 1983 Prisoner Civil Rights Litigation*, *The Prison Journal*, December 1998, p. 474.

Describing the handicaps facing pro se inmate litigants, one federal judge noted:

A collection of books is never a substitute for a lawyer. We should not romanticize what even a jailhouse lawyer, much less a poorly-educated inmate, can accomplish by rummaging for a few hours in a limited collection. Many intelligent prisoners can pick up the lingo of the law; very few of them can put it all together and present a persuasive petition or claim.

*Toussaint v. McCarthy*, 926 F.2d 800, 815 (9th Cir. 1990).

153. *Bounds v. Smith*, 430 U.S. 817 (1977).

154. A 1996 Supreme Court decision, *Lewis* represents a huge step backwards from the principles enunciated in *Bounds*. In *Lewis*, a divided Court ruled that even the total absence of a prison law library does not violate the Constitution unless a prisoner can show that he or she was effectively barred from pursuing a *nonfrivolous* legal claim as a result of the deprivation, and thus suffered *actual injury*.<sup>17</sup> *Lewis v. Casey*, 516 U.S. 804 (1996). The practical effect of *Lewis* is to make it much more difficult for prisoners to challenge a lack of legal services or facilities. See David W. Wilhelmus, *Where Have All The Law Libraries Gone?* *Corrections Today*, December 1999, p. 153.



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155. See, for example, Larry Fugate, *A New Law Cracks Down on Frivolous Inmate Lawsuits*, *Daily Reporter* (Columbus, Ohio), July 19, 1996; Elisa Crouch, *A Sue at Your Own Risk*, *Missouri Digital News*, September 1, 1995; *APa. House Approves Legislation That Would Curb Inmates' Lawsuits*, *Philadelphia Inquirer*, January 21, 1998.

156. ICCPR, art. 10(1).

157. ICCPR, art. 10(3).

158. See, for example, the U.N. Human Rights Committee's decision in *Mukong v. Cameroon*, in which it cites various violations of the Standard Minimum Rules as evidence showing that the complainant was subject to cruel, inhuman and degrading treatment. *Mukong v. Cameroon* (No. 458/1991) (August 10, 1994), U.N. Doc. CCPR/C/51/D/458/1991. The authority of the Standard Minimum Rules has also been recognized in U.S. courts, which have cited them as evidence of *A*contemporary standards of decency<sup>@</sup> relevant in interpreting the scope of the Eighth Amendment. See *Estelle v. Gamble*, 429 U.S. 97, 103-04 & n. 8 (1976); *Detainees of Brooklyn House of Detention for Men v. Malcolm*, 520 F. 2d 392, 396 (2d Cir. 1975); *Williams v. Coughlin*, 875 F. Supp. 1004, 1013 (W.D.N.Y. 1995); *Lareau v. Manson*, 507 F. Supp. 1177, 1187-89 & n. 9 (1980) (describing the Standard Minimum Rules as *A*an authoritative international statement of basic norms of human dignity and of certain practices which are repugnant to the conscience of mankind<sup>@</sup>).

159. Body of Principles, art. 5.

160. U.N. Human Rights Committee, General Comment 21, paragraph 3. The Human Rights Committee, a body of experts established under the ICCPR, provides authoritative interpretations of the ICCPR through the periodic issuance of General Comments.

161. See, for example, *Aydin v. Turkey*, Eur. Ct. of H.R., Judgment of 25 September 1997, paras. 62-88; *Prosecutor v. Furundija*, ICTY, Case No. IT-95-17/1-T, Judgment of 10 December 1998, paras. 163-86.

162. Judgment, International Criminal Tribunal for Rwanda (ICTR), *Prosecutor v. Jean-Paul Akayesu*, Case No. ICTR-96-4-T (2 September 1998), para. 38 (hereinafter *Akayesu judgment*). In the *Akayesu* decision, which involved a Rwandan official who encouraged the rape of Tutsi women during the genocide, the court went on to explain that: *A*coercive circumstances need not be evidenced by a show of physical force. Threats, intimidation, extortion and other forms of duress which prey on fear or desperation may constitute coercion.<sup>@</sup>

The Elements of Crimes corresponding to the Statute of the International Criminal Court include a similar definition of the *A*war crime of rape.<sup>@</sup> It too speaks of the physical invasion of a person with a sexual organ, or of the penetration of a person's anal or genital openings with any object or part of the body, when such an act is committed during wartime. It requires that the invasion be committed *A*by

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force, or by threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power . . . or by taking advantage of a coercive environment,<sup>163</sup> or that the invasion be committed ~~A~~against a person incapable of giving genuine consent.<sup>164</sup> Article 8(2)(b)(xxii)-1, Elements of Crimes, Report of the Preparatory Commission for the International Criminal Court, U.N. Doc. PCNICC/2000/INF/3/Add.2 (6 July 2000), p. 34; see also ~~A~~Crime against humanity of rape,<sup>165</sup> article 7(1)(g)-1, *ibid.*, p. 12. These regulations also specifically note that ~~A~~the concept of ~~>invasion<~~ is intended to be broad enough to be gender-neutral.<sup>166</sup> *Ibid.*, fn. 15.

Also instructive is the definition of rape employed by the U.N. special rapporteur on rape during armed conflict. She describes rape as ~~A~~the insertion, under conditions of force, coercion or duress, of any object, including but not limited to a penis, into a victim's vagina or anus; or the insertion, under conditions of force, coercion or duress, of a penis into the mouth of the victim.<sup>167</sup> Significantly, she points out that: ~~A~~Rape is defined in gender-neutral terms, as both men and women are victims of rape.<sup>168</sup> Report of the Special Rapporteur on systematic rape, sexual slavery and slavery-like practices during armed conflict (hereinafter ~~A~~U.N. sexual slavery report<sup>169</sup>), U.N. Doc. E/CN.4/Sub.2/1998/13 (22 June 1998), para. 24.

163. See, for example, *All Too Familiar*, pp. 52-53. In the *Akeyesu* decision, the court explained: ~~A~~Sexual violence, including rape, is not limited to physical invasion of the human body and may include acts which do not involve penetration or even physical contact.<sup>170</sup> *Akeyesu* judgment, para. 38.

164. Convention against Torture, arts. 1(1) and 16(1).

165. For a discussion of this point in the context of specific prison visits, see the reports of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), the prison monitoring organ of the Council of Europe. In a 1993 report on Finland's prisons for example, the CPT expressed concern over the high level of inter-prisoner violence and criticized the ~~A~~low level of supervision by staff of the activities of inmates in some areas of [Helsinki Central Prison].<sup>171</sup> Concluding that the prison authorities had to do more to counter the problem of prisoner-on-prisoner violence, it emphasized: ~~A~~The duty of care which is owed by custodial staff to those in their charge includes the responsibility to protect them from other inmates who wish to cause them harm.<sup>172</sup> CPT, ~~A~~Report to the Finnish Government on the visit to Finland carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment from 10 to 20 May 1992,<sup>173</sup> 1 April 1993, CPT/Inf (93) 8.

166. See U.N. sexual slavery report, paras. 27-28.

167. *Ibid.*, para. 28.

168. *Ibid.* (quoting the Slavery Convention, art. 1(1)).

169. Slavery Convention, arts. 2 and 6.

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170. ICCPR, art. 8; see also Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery.

171. See U.N. sexual slavery report, paras. 29-31 (Implicit in the definition of slavery are notions concerning limitations on autonomy, freedom of movement and power to decide matters relating to one's sexual activity . . . . Sexual slavery also encompasses most, if not all forms of forced prostitution. @).

172. By contrast, in 1929, when the U.S. ratified the Slavery Convention, it only attached one reservation. A reservation that had the effect of giving a more generous interpretation to the treaty's protections.

173. Among other U.S. reservations and understanding to the ICCPR are the following:

That the policy and practice of the United States are generally in compliance with and supportive of the Covenant's provisions regarding treatment of juveniles in the criminal justice system. Nevertheless, the United States reserves the right, in exceptional circumstances, to treat juveniles as adults, notwithstanding paragraphs 2 (b) and 3 of article 10 . . . . The United States further understands that paragraph 3 of article 10 does not diminish the goals of punishment, deterrence, and incapacitation as additional legitimate purposes for a penitentiary system.

174. See, for example, Statement of Sweden, June 18, 1993; Statement of Spain, October 5, 1993; Statement of Portugal, October 5, 1993; Statement of Norway, October 4, 1993; Statement of Netherlands, September 28, 1993. Available: [http://www.un.org/Depts/Treaty/final/ts2/newfiles/part\\_boo/iv\\_boo/iv\\_4.html](http://www.un.org/Depts/Treaty/final/ts2/newfiles/part_boo/iv_boo/iv_4.html) (December 1999).

175. Vienna Convention on the Law of Treaties, art. 19(3).

176. Human Rights Committee, Comments on United States of America, U.N. Doc. CCPR/C/79/Add 50 (1995).

177. For further discussion of Human Rights Watch's position on U.S. reservations to these treaties, see Human Rights Watch, *All Too Familiar: Sexual Abuse of Women in U.S. State Prisons* (New York: Human Rights Watch, 1996), pp. 47-50.

178. See, for example, *White v. Paulsen*, 997 F. Supp. 1380 (E.D. Wa. 1998). The U.S. government did enact implementing legislation under the Convention against Torture to allow persons tortured outside the United States to file suit in U.S. courts. Torture Victim Protection Act of 1991 (TVPA), 18 U.S.C. Sec. 2340 *et seq.*

179. The Human Rights Committee consists of eighteen experts acting in their individual capacities who

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are elected by states parties to the ICCPR. The Committee against Torture consists of ten experts acting in their individual capacities who are elected by the states parties to the Convention against Torture.

180.The Working Group consists of five independent experts from the membership of the Sub-Commission on the Promotion and Protection of Human Rights. Meeting for the first time in 1975 as the Working Group on Slavery, the group was renamed in 1988.

181.In a section outlining areas of concern in the criminal justice system, the government=s 1999 report to the Committee against Torture made a brief reference to Asexual assault and abuse of prisoners by correctional officers and other prisoners.@ Although the report went on to discuss the custodial sexual abuse of women prisoners in some detail, it contained no further mention of the problem of prisoner-on-prisoner sexual abuse. See DOS 1999 Torture Report. The 1994 report included an even more allusive reference to the problem in its discussion of prison classification rules, which noted that Ait would be dangerous to house young, inexperienced, non-violent offenders with older men who have spent a great deal of their lives in prison for the commission of violent, predatory crimes.@ Consideration of Reports Submitted by State Parties Under Article 40 of the Covenant, Initial report of state parties due in 1993, Addendum, United States of America, U.N. Doc. CCPR/C/81/Add.4 (1994), para. 294.

182.The Human Rights Committee last reported on U.S. compliance in 1995. With regard to prisons, the Human Rights Committee expressed concern over overcrowding, custodial sexual abuse of women inmates, and conditions in high security prisons. Human Rights Committee, Comments on United States of America, U.N. Doc. CCPR/C/79/Add 50 (1995).

183.Testimony of Rodney Hulin, September 27, 1997.

184.Human Rights Watch telephone interview, Beaumont, Texas, October 30, 1999.

185.Complaint, *Bruntmyer v. TDCJ*, date unknown.

186.Human Rights Watch telephone interview, Beaumont, Texas, October 30, 1999.

187.See *Farmer v. Brennan*, 511 U.S. 825 (1994). Farmer=s feminine characteristics included silicone breast implants.

188.Previous studies and analyses agree on this point. See, for example, Daniel Welzer-Lang, Lilian Mathieu and Michael Faure, *Sexualités et violences en prison* (Lyon: Aleas, 1996), pp. 150-53; Carl Weiss and David James Friar, *Terror in the Prisons: Homosexual Rape and Why Society Condone It* (Indianapolis: Bobbs-Merrill, 1974), p. 74 (explaining that A[n]o age escapes prison rape, but youth is hit the hardest). Accounts of minors imprisoned with adults often make reference to sexual abuse. For example, Amnesty International, in its 1998 report on juvenile justice in the United States, quoted a letter from an incarcerated fifteen-year-old in which the boy stated that adult inmates were Atalk[ing] to

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me sexually.® He said: They make moves on me. I=ve had people tell me I=n pretty and that they=ll rape me . . . I=n even too scared to go eat.® Amnesty International, Betraying the Young: Children in the U.S. Justice System® (AMR 51/60/98), 20 November 1998. Available at: <http://www.amnesty.org/ailib/aipub/1998/AMR/25106098.htm> (December 1999).

189. See case history described above.

190. Human Rights Watch telephone interview with J.Q., Arkansas, August 25, 1998. The woman said that her son, age twenty, was incarcerated for burglary, while four of the inmates who raped him had life sentences.

191. Letter to Human Rights Watch from R.P., Arkansas, September 14, 1998.

192. Letter to Human Rights Watch from R.P., Arkansas, October 5, 1998.

193. Letter to Human Rights Watch from W.W., Florida, February 19, 1999.

194. Letter to Human Rights Watch from D.A., Nebraska, October 31, 1996.

195. Letter to Human Rights Watch from R.H, Utah, September 10, 1996.

196. Letter to Human Rights Watch from C.B., Minnesota, July 19, 1999.

197. Other studies have also found that both the victims and perpetrators of sexual abuse tend to be young, although perpetrators in mixed-age institutions may be slightly older than victims. See, for example, Lockwood, *Prison Sexual Violence*, p. 28.

198. Letter to Human Rights Watch from R.B., California, September 1, 1996.

199. Letter to Human Rights Watch from J.C., Texas, December 16, 1998.

200. Human Rights Watch interview, Texas, March 1999.

201. Human Rights Watch interview, California, May 1998.

202. Letter to Human Rights Watch from R.B., Texas, October 13, 1996.

203. It is estimated that between 6 and 15 percent of prison and jail inmates are seriously mentally ill. See Editorial, Jails and PrisonsC Americas New Mental Hospitals,® *American Journal of Public Health*, December 1995, p. 1612.

204. Letter to Human Rights Watch from B.S., Indiana, June 16, 1999.

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205.Human Rights Watch interview, Texas, March 1999.

206.Letter to Human Rights Watch from L.V., Arkansas, September 25, 1996.

207.Letter to Human Rights Watch from J.G., Minnesota, August 8, 1996.

208.Among the judicial decisions discussing the problem of Ahomosexual predators@are: *Cole v. Flick*, 758 F. 2d 124 (3d Cir. 1985) (upholding prison regulations limiting inmates= hair length, in part because allowing inmates to wear long hair could lead to an increase in attacks by Apredatory homosexuals@); *Roland v. Johnson*, 1991 U.S. App. LEXIS 11468 (6th Cir. 1991) (describing Agangs of homosexual predators@); *Roland v. Johnson*, 856 F. 2d 764 (6th Cir. 1988); *Ashann-Ra v. Virginia*, 112 F. Supp. 2d 559, 563 (W.D. Va. 2000) (mentioning Ainmates known to be predatory homosexuals@ who Astalk other inmates in the showers@).

209.The homophobia that may underlie the judicial stereotype of the inmate Ahomosexual predator@also shows itself in cases involving gay victims of rape. See, for example, *Carver v. Knox County*, 753 F. Supp. 1370, 1380 (1989) (pointing out that a witness admitted on cross-examination that Athe rape he witnessed was of a known homosexual whose cries for help may not have been as vigorous as those of a heterosexual inmate under the same circumstances@).

210.Letter to Human Rights Watch from P.N.E., Illinois, October 28, 1997. See also Stephen Donaldson, AA Million Jockers, Punks, and Queens: Sex among American Male Prisoners and its Implications for Concepts of Sexual Orientation,@February 4, 1993. Donaldson explains that Athe sexual penetration of another male prisoner by [a dominant prisoner] is considered a male rather than a homosexual activity, and is considered to validate the penetrator=s masculinity.@ Ibid., p. 5. He later goes on to emphasize that A[f]or the majority of prisoners, penetrative sex with a punk or queen remains a psychologically heterosexual and, in the circumstances of confinement, normal act.@ Ibid., p. 12.

211.Previous studies have similarly concluded that gays face a higher risk of sexual assault and abuse. See, for example, Wayne S. Wooden and Jay Parker, *Men Behind Bars* (New York: Plenum Press, 1982), p. 18 (finding that 41 percent of homosexual were sexually assaulted, as opposed to 9 percent of heterosexuals); see also *Gregory v. Shelby*, 220 F. 3d 433 (6th Cir. 2000) (gay jail inmate sexually abused and killed by another inmate).

212.Letter to Human Rights Watch from M.P., Arkansas, September 24, 1996.

213.See, for example, Leo Carroll, AHumanitarian Reform and Biracial Sexual Assault in a Maximum Security Prison,@in Anthony M. Scacco, Jr., ed., *Male Rape* (1982); Alan J. Davis, ASexual Assaults in the Philadelphia Prison System,@in *Male Rape*; Daniel Lockwood, *Prison Sexual Violence* (1980); Hans Toch, *Living in Prison* (1992); C. Scott Moss, Ray E. Hosford and William R. Anderson, ASexual Assault in a Prison,@*Psychological Reports*, vol. 44 (1979); David A. Jones, *The Health*

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*Risks of Imprisonment* (1976).

214. Human Rights Watch's sources of information were almost entirely made up of white, African American, and Hispanic inmates; we did not receive enough information from members of other minorities to be able to reach any conclusions as to their general situation.

215. Letter to Human Rights Watch from W.M., Texas, October 31, 1996.

216. Letter to Human Rights Watch from T.D., Texas, March 14, 1997.

217. See, for example, Lockwood, *Prison Sexual Violence*, pp. 105-06.

218. See, for example, Anthony M. Scacco, Jr., *Rape in Prison* (Springfield, IL: Charles C. Thomas, 1975).

219. Leo Carroll, "Race, Ethnicity, and the Social Order of the Prison," in Johnson and Hans Toch, *The Pains of Imprisonment* (1982), p. 194.

220. Letter to Human Rights Watch from V.H., Arkansas, November 17, 1996.

221. See, for example, Davis, "Sexual Assaults," pp. 14-15; Nobuhle R. Chonco, "Sexual Assaults among Male Inmates," *The Prison Journal*, vol. 68, no. 1 (1989), p. 74.

222. Human Rights Watch interview, Texas, October 1998.

223. Letter to Human Rights Watch from L.V., Arkansas, September 3, 1996.

224. Letter to Human Rights Watch from D.G., Texas, January 15, 1998.

225. Psychological Evaluation, Texas Department of Criminal Justice, Institutional Division, October 9, 1995.

226. Letter to David Barron, District Attorney, Madisonville, Texas, from L.O., August 19, 1996 (including notarized affidavit of L.O. dated August 18, 1996).

227. Letter to Human Rights Watch, September 27, 1998.

228. Letter to Human Rights Watch from V.H., Arkansas, November 17, 1996.

229. Letter to Human Rights Watch from B.H., Florida, October 22, 1996.

230. Gilligan, *Violence*, p. 165.

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231. See the international definitions of rape discussed in chapter III, above. Although there is a critical difference between consensual and nonconsensual sex in terms of whether an inmate's rights have been violated, it is worth noting that all forms of sex, even consensual sex, are uniformly forbidden under prison disciplinary codes.

232. International protections of prisoner's rights demonstrate an implicit recognition of this problem by barring medical or scientific experimentation even on prisoners who purport to consent to it. See article 11(2) of Protocol I to the Geneva Conventions, prohibiting experimentation on prisoners of war. Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I), 1125 U.N.T.S. 3, entered into force December 7, 1978. The U.N. Human Rights Committee, the body charged with monitoring implementation of the International Covenant on Civil and Political Rights (ICCPR), has a similar reading of the ICCPR's protections. It has explained:

Article 7 [of the ICCPR] expressly prohibits medical or scientific experimentation without the free consent of the person concerned . . . . The Committee also observes that special protection in regard to such experiments is necessary in the case of persons not capable of giving valid consent, and in particular those under any form of detention or imprisonment.

Human Rights Committee, General Comment 20, Article 7 (Forty-fourth session, 1992), U.N. Doc. HRI/GEN/1/Rev.1 at 30 (1994).

233. Human Rights Watch, *All Too Familiar*, p. 43.

234. Letter to Human Rights Watch from J.D., Colorado, October 12, 1997.

235. A landmark 1982 study of prisoner-on-prisoner sexual abuse in Philadelphia specifically mentions this problem, along with describing the difficulty, in the prison context, of distinguishing rape from consensual sex:

[I]t was hard to separate consensual homosexuality from rape, since many continuing and isolated homosexual liaisons originated from a gang rape, or from the ever-present threat of gang rape. Thus, a threat of rape, expressed or implied, would prompt an already fearful young man to submit. Prison officials are too quick to label such activities as consensual.

Davis, *Sexual Assaults in the Philadelphia Prison System*, p. 13.

236. Allan Turner, *A Mother probes son's death in prison*, *Houston Chronicle*, June 4, 1995.

237. Human Rights Watch interview, Texas, March 1999.



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238.Ibid.

239.Letter to Human Rights Watch, October 13, 1996.

240.Human Rights Watch interview, Texas, October 1998.

241.Letter to Human Rights Watch from R.L., Arizona, August 26, 1999.

242.Letter to Human Rights Watch from W.M., Texas, December 26, 1997.

243.Human Rights Watch interview, October 1998.

244.Letter to Human Rights Watch from M.H., Florida, October 29, 1996.

245.Letter to Human Rights Watch from J.S., Tennessee, September 5, 1996.

246.Letter to Human Rights Watch from G.H., Texas, December 1, 1998.

247.Human Rights Watch interview, Texas, October 1998.

248.Letter to Human Rights Watch from P.S., Texas, October 17, 1996.

249.Human Rights Watch interview, Texas, March 1999.

250.Letter to Human Rights Watch from C.K., Texas, October 28, 1996.

251.Letter to Human Rights Watch from W.M., Texas, October 31, 1996. The prisoner attributed this belief to African American inmates in particular, but Human Rights Watch has found it to be fairly widespread among prisoners generally.

252.In doing so they echo the views of prison experts from earlier times. One such commentator, writing in 1934, warned:

Every year large numbers of boys, adolescent youths, and young men are made homosexuals, either temporarily or permanently, in the prisons of America . . . These newly born perverts, in turn, corrupt others.

Joseph Fishman, *Sex in Prison* (New York: National Library Press, 1934), p. 83. Even certain contemporary writers have held to this idea, asserting: ARepeated homosexual rape causes the inmate victims to develop a new sexual identity. They now harbor a raped female in their male bodies.@ Weiss and Friar, *Terror in the Prisons*, p. 74. (But see Lockwood, *Prison Sexual Violence*, p. 94, stating Athere is no evidence that homosexual rape actually causes changes of sexual identity.@) The language of another expertCspeaking of a sexually abused inmate as having Apart[ed] with his manhood@Csimilarly suggests that raped inmates somehow become female. Alan J. Davis, AReport on Sexual Assaults in a

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Prison System and Sheriff's Vans,@ in Leon Radzinowicz and Marvin E. Wolfgang, eds., *Crime and Justice*, 2d ed. (New York: Basic Books, 1977).

253.Letter to Human Rights Watch from M.B., Indiana, October 10, 1996.

254.Letter to Human Rights Watch from R.E., Florida, March 5, 1999.

255.Human Rights Watch interview, Texas, March 1999.

256.Letter to Human Rights Watch from J.O., Utah, February 18, 1997.

257.See, for example, Human Rights Watch, "Getting Away with Murder, Mutilation, and Rape: New Testimony from Sierra Leone," *A Human Rights Watch Short Report*, vol. 11, no. 3(A), June 1999. The report states: "Several girls and women abducted during January described pairing up and attaching themselves to one rebel so as to avoid gang-rape, be given a degree of protection, and be subjected to less hardship." *Ibid.*, p. 34.

258.Letter to Human Rights Watch from W.M., Texas, October 31, 1996.

259.The phenomenon of renaming raped men has also been reported in the context of armed conflict. A *New York Times* article on Russia's conflict in Chechnya, for example, includes an account of how two men allegedly raped by Russian soldiers were given female names after the rape. Michael Wines, "Chechens Report Torture in Russian Camps," *New York Times*, February 18, 2000.

260.Letter to Human Rights Watch from J.D., Texas, November 5, 1996.

261.Letter to Human Rights Watch from T.B., Texas, October 23, 1996.

262.Letter to Human Rights Watch from T.D., Texas, March 14, 1997.

263.Letter to Human Rights Watch from G.H., Texas, December 1, 1998. The responsibility for household chores, typical in such accounts, is consistent with the idea that these victimized prisoners are substituting for women (in the most traditional sense). Another such prisoner, for example, spoke of being forced into sex and into "performing other duties as a woman, such as making his bed." M.P., Arkansas, pro se federal civil rights complaint filed August 2, 1996.

264.Letter to Human Rights Watch from C.D., Indiana, November 20, 1996.

265.The amendment, adopted in 1865, states:

Section 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

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Section 2. Congress shall have power to enforce this article by appropriate legislation.  
U.S. Constitution, Thirteenth Amendment.

266.Rideau, *The Sexual Jungle*, p. 75.

267.The view of rape as a crime of violence rather than sexual passion found its most prominent exponent in Susan Brownmiller, whose work *Against Our Will: Men, Women and Rape*, is a touchstone for work on the topic. Susan Brownmiller, *Against Our Will: Men, Women and Rape* (New York: Simon & Schuster, 1975).

268.The opinion of a federal court in Pennsylvania, for example, in a case involving sex between inmates, betrays the assumption that rape is sexually motivated. The court stated: *Prison rapes are a serious problem . . . Perhaps forward-looking legislative and administrative reforms with respect to conjugal visits will alleviate the problem of prison rape.* *United States v. Brewer*, 363 F. Supp. 606, 608 (M.D. Pa. 1973).

269.See, for example, Lee H. Browker, *Prison Victimization* (New York: Elsevier, 1980), p. 7; Anthony M. Scacco, Jr., *Rape in Prison* (Springfield, Illinois: Charles C. Thomas, 1975), p. 47; Rideau, *The Sexual Jungle*, pp. 74-75; Victor Hassine, *Life Without Parole: Living in Prison Today* (Los Angeles: Roxbury Publishing, 1996), pp. 111-12.

270.Rideau, *The Sexual Jungle*, p. 74.

271.Letter to Human Rights Watch from D.G., Virginia, November 17, 1996.

272.Letter to Human Rights Watch from D.A., Nebraska, September 6, 1996.

273.Letter to Human Rights Watch from D.W., Kansas, February 23, 1998.

274.Letter to Human Rights Watch from J.O., Utah, February 18, 1997. A letter from a prisoner to the editor of *Prison Life Magazine* similarly illustrates the use of *punk* as the ultimate term of opprobrium:

Dear [editor], You're a fucking punk! . . . you take it up the ass, pole smoker! I'd bust your fucking grape open if I could get my hands on you . . . Don't be a punk . . .

*Prison Life Magazine* (October 1996), p. 11.

275.Letter to Human Rights Watch from J.G., Colorado, January 31, 1999.

276.Lockwood, *Issues in Prison Sexual Violence*, p. 101.

277.Letter to Human Rights Watch, September 10, 1996.

278.Ibid.

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279.Human Rights Watch interview, Texas, October 1998.

280.Ibid.

281.Note to Sergeant W., April 19, 1999.

282.Ibid.

283.Ibid.

284.Letter to Human Rights Watch, September 10, 1996.

285.Human Rights Watch interview, Texas, October 1998.

286.Ibid.

287.Letter from warden to M.L.H., August 15, 1994. (Compare the date of this letter to the date of the inter-office memorandum cited in the following footnote.)

288.The counselor's report on the situation said: "According to Inmate S.H., W. is forcing him (S.H.) to perform sexual favors, because he does not have any money to pay protection." Texas Department of Criminal Justice, Inter-Office Communications, August 10, 1994.

289.Complaint, *S.H. v. Scott*, July 12, 1996.

290.Texas Department of Criminal Justice, Inmate Grievance Form, Step 1, June 22, 1994.

291.Ibid., July 11, 1994.

292.For example, one affidavit stated:

I knew that Plaintiff was being sexually assaulted by other inmates, specifically: R.J., E.D., and others. Plaintiff talked with me about these problems and I was like his confidant to him, and he was pretty upset, and stressed out. Plaintiff spoke with numerous prison officials about his situation, namedly W.S., L.S., C.B., and others. I know this, because plaintiff spoke to me regarding these conversations.

Affidavit dated March 11, 1997 (names omitted).

293.Letter to Human Rights Watch, August 4, 1999.

294.Letter to Human Rights Watch, September 24, 1996.

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295.Ibid.

296.Ibid.

297.Ibid.

298.M.R., Arkansas, federal civil rights complaint filed July 25, 1996.

299.Ibid.

300.M.R., Arkansas, pro se federal civil rights complaint filed July 25, 1996.

301.Excerpt of a *pro se* complaint filed in federal court by a prisoner in Arkansas, January 14, 1998.

302.Letter from W.M. to Human Rights Watch, September 13, 1996.

303.In January 1998, a federal jury rejected Blucker's argument that two prison staff members, including a prison doctor, had been deliberately indifferent to the risk that Blucker would be raped. The previous August, a different jury had ruled in favor of five other prison employees in Blucker's suit. Carolyn Starks, "Former Inmate with AIDS Virus Loses Suit against Prison Officials," *Chicago Tribune*, January 24, 1998. Blucker, who is married, was paroled from prison in 1996.

304.Few prison inmates can afford to pay for legal counsel in suits challenging ill-treatment in prison. (See chapter on legal context.) The vast majority of prisoners' claims, therefore, are filed *pro se*, as attorneys do not generally find prison litigation on a contingency basis to be financially viable. This reflects both the legal obstacles to such litigation and the lack of sympathy for prisoners among the public and the judiciary, which, from a lawyer's perspective, translates into low prospective damage awards. Indeed, in Human Rights Watch's experience, the only individual cases in which prisoners have succeeded in finding private lawyers to represent them are those involving HIV transmission, suggesting that only when prisoners' lives are directly and unequivocally at issue is there much hope that their injuries will be legally recognized.

305.*K.S. v. Sargent*, 149 F. 3d 783, 785 (8th Cir. 1998).

306.*See K.S. v. Sargent*, 149 F.3d 783 (8th Cir. 1998). A related decision is *Billman v. IDOC*, 56 F.3d 785 (1995), in which the court stated that a prison official could be held liable for assigning an inmate to a double cell with another inmate who was known to be a rapist and was HIV-positive. Ibid., pp. 788-89.

307.Letter to Human Rights Watch, December 13, 1996.

308.Lawrence K. Altman, "Much More AIDS in Prisons Than in General Population," *New York Times*, September 1, 1999 (describing results of study commissioned by the National Commission on

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Correctional Health Care).

309.U.S. Department of Justice, Bureau of Justice Statistics, *AHIV in Prisons and Jails*, 1995,@ February 1998.

310.*See* Elizabeth Kantor, *A*AIDS and HIV Infection in Prisoners,@in *The AIDS Knowledge Base* (Lippenkott, Williams & Wilkins: New York, 1999) (available online at <<http://hivinsite.ucsf.edu/akb/1997/index.html>>); Nancy Mahon, *A*New York Inmates=HIV Risk Behaviors: The Implications for Prevention Policy and Programs,@ *American Journal of Public Health*, vol. 86, no. 9, September 1996, p. 1211.

311.Recognizing this, the European Court of Human Rights has declared that the abuse *A*leaves deep psychological scars on the victim which do not respond to the passage of time as quickly as other forms of physical and mental violence.@ *Aydin v. Turkey*, Judgment of 25 Sept. 1997, Eur. Ct. of H.R., para. 83.

312.Letter to Human Rights Watch, March 28, 1999.

313.Letter to Human Rights Watch, October 31, 1996.

314.Letter to Human Rights Watch, November 4, 1996.

315.Letter to Human Rights Watch, October 12, 1997.

316.Letter to Human Rights Watch, September 10, 1996.

317.Letter to Human Rights Watch from E.R., October 10, 1996. Another inmate with similar fears said, *A*I feel like I am no longer a man, at least not recognized as one on the inside.@ Letter to Human Rights Watch from P.E., March 6, 1999.

318.Letter to Human Rights Watch, March 30, 1999.

319.Letter to Human Rights Watch from J.D., November 5, 1996.

320.*See*, for example, Burgess and Holmstrom, *A*Rape Syndrome,@*American Journal of Psychiatry*, vol. 9 (1974), pp. 981-86.

321.Letter to Human Rights Watch, September 23, 1996.

322.L. Cohen and S. Roth, *A*The psychological aftermath of rape: Long-term effects and individual differences in recovery,@ *Journal of Social and Clinical Psychology*, vol. 5 (1988), pp. 525-34; Stephen Donaldson, *A*Rape Trauma Syndrome in Male Prisoners@(undated) (available on the internet at <<http://www.spr.org/docs/rts.html>>).

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323.The 1994 Nebraska prison study reported that over one-third of inmates targeted for sexual abuse had thoughts of suicide after the incident. Struckman-Johnson, APrison Sexual Coercion,@p. 74.

324.Letter to Human Rights Watch from D.E., May 14, 1998.

325.Letter to Human Rights Watch from R.H., September 10, 1996.

326.Lindsay M. Hayes, APrison Suicide: An Overview and Guide to Prevention,@National Institute of Corrections, June 1995, p. 1.

327.Ibid., p. 32.

328.Ibid., p. 70. The rate of jail suicide, approximately nine times that of the general population, far exceeds that of prison suicide. Ibid., p. 1. Yet a number of precipitating factors exist in the jail contextCincluding the initial crisis of incarceration and shame over the alleged offenseCthat distinguish it from the prison context. Although prison rape, or the fear of rape, may play a role in some prisoners=suicidal response to detention, it is only one of many factors that come into play during these first stages of incarceration.

329.Letter to Human Rights Watch from W.W., December 31, 1996.

330.Letter to Human Rights Watch from W.M., September 13, 1996.

331.See, for example, Lockwood, AIssues in Prison Sexual Violence,@p. 98.

332.Letter to Human Rights Watch, September 21, 1996.

333.Letter to Human Rights Watch from L.Q., December 3, 1997.

334.Letter to Human Rights Watch from J.D., November 5, 1996.

335.Daniel Lockwood, *Prison Sexual Violence* (New York: Elsevier, 1980), pp. 53-54.

336.James Gilligan, *Violence: Our Deadly Epidemic and its Causes* (New York: Grosset/Putnam, 1996).

337.Letter to Human Rights Watch from B.E., October 26, 1996.

338.Human Rights Watch telephone interview, October 22, 1999. When describing the rape of one woman, he added, AI remember being extremely angry.@

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339. Letter to Human Rights Watch from R.L., October 21, 1996 (emphasis in original).

340. Michael Berryhill, A Prisoner's Dilemma, @ *The New Republic*, December 27, 1999; *see also* Joseph L. Galloway, A Into the Heart of Darkness: A Texas Prison's Racist Subculture Spawned the Grisly Murder in Jasper, @ *U.S. News & World Report*, March 8, 1999 (noting that one defendant's lawyer stated that he believed his client was raped in prison).

341. Stephen Donaldson, the late president of Stop Prisoner Rape, as quoted in Ellis Henican, *Special Report: Prison Rape* C Every Man's Worst Fear Becomes a National Scandal, *Penthouse Magazine* (August 1995), p. 30; *see also* Robert W. Dumond, A The Sexual Assault of Male Inmates in Incarcerated Settings, @ *International Journal of the Sociology of Law*, vol. 20 (1992), p. 147 (asking A is it not reasonable to assume that some [raped inmates] will leave prison more embittered, angry and violent? . . . How many innocent victims will fall prey to inmates full of rage and anger at a system that did not protect them? @); Wooden and Parker, *Men Behind Bars*, p. 116-17 (expressing concern over A the potential ramifications to society @ of releasing raped inmates, and urging that such inmates receive proper psychological care A to stem the possibility of their becoming future assaulters @); Heilpern, *Fear or Favour*, p. 18 (stating that A [t]hose who have been sexually assaulted in prison will be released as time bombs, waiting to obtain their revenge in inappropriate and destructive ways @).

342. Daniel Lockwood, A Issues in Prison Sexual Violence, @ in Michael C. Braswell, Reid H. Montgomery, Jr., and Lucien X. Lombardo, eds., *Prison Violence in America*, 2nd edition (Cincinnati: Anderson Publishing, 1994), p. 99.

343. *LaMarca v. Turner*, 995 F.2d 1526, 1534, 1543 (11th Cir. 1993).

344. Affidavit, September 1, 1996.

345. Complaint, *N. v. Woods*, civil action filed October 3, 1995.

346. Human Rights Watch interview, Texas, October 1998.

347. Letter to Human Rights Watch, February 19, 1997.

348. To date, the U.S. Bureau of Justice statistics has not included prisoner-on-prisoner rape or other sexual abuse in its annual crime surveys (available on the internet at <http://www.ojp.usdoj.gov/bjs/pub/pdf/sisfcfq.pdf>).

349. Carl Weiss and David James Friar, *Terror in the Prisons: Homosexual Rape and Why Society Condones It* (Indianapolis: Bobbs-Merrill, 1974), p. 61.

350. See Lockwood, A Issues in Prison Sexual Violence, @ p. 97 (calling prisoner-on-prisoner rape A a rare event, @ but noting that sexual harassment in prison affects A large numbers of men @); Robert W.



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Dumond, *Algnominious Victims: Effective Treatment of Male Sexual Assault in Prison*, @ August 15, 1995, p. 2 (stating that *A*evidence suggests that [sexual assault in prison] may a staggering problem*@*).

351.Letter to Human Rights Watch from Manuel D. Romero, deputy secretary of operations, New Mexico Corrections Department, July 9, 1997.

352.Letter to Human Rights Watch from Harold W. Clarke, director, Nebraska Department of Correctional Services, July 10, 1997.

353.For Florida, see letter to Human Rights Watch from Fred Schuknecht, inspector general, Florida Department of Corrections, July 30, 1997 (94 reported sexual batteries or assaults in 1995, 92 in 1996); letter to Human Rights Watch from Fred Schuknecht, inspector general, Florida Department of Corrections, July 8, 1998 (93 allegations of sexual battery reported in 1997); letter to Human Rights Watch from E.A. Sobach, chief of investigations, Florida Department of Corrections, December 8, 1999 (89 allegations of sexual battery in 1998, 91 in 1999 (through December 7)).

For Ohio, see letter to Human Rights Watch from Norm Hills, north region director, Ohio Department of Rehabilitation and Correction, May 8, 1997 (one reported rape since January 1, 1997); letter to Human Rights Watch from Norm Hills, north region director, Ohio Department of Rehabilitation and Correction, July 16, 1998 (two additional sexual assaults since May 1997); letter to Human Rights Watch from Rhonda Millhouse, administrative assistant, Ohio Department of Rehabilitation and Correction, December 30, 1999 (fifty-five alleged sexual assaults in 1999, of which eight have been confirmed, the rest being deemed acts of consensual sex or fabrications).

For Texas, see letter to Human Rights Watch from Debby Miller, executive services, Texas Department of Criminal Justice, May 19, 1997 (average of 110 sexual assaults investigated annually since 1993, with four cases being criminally prosecuted); letter to Human Rights Watch from Debby Miller, executive services, Texas Department of Criminal Justice, June 29, 1998 (123 reported sexual assaults in 1997, and fifty-nine in the first five months of 1998); letter to Human Rights Watch from Darin Pacher, administrator, Texas Department of Criminal Justice, April 17, 2000 (enclosing table showing eighty-four alleged sexual assaults in 1994, 131 in 1995, eighty-four in 1996, eighty-seven in 1997, eighty-nine in 1998, 237 in 1999, and sixty-two in the first three months of 2000).

For the Federal Bureau of Prisons, see letter to Human Rights Watch from Renee Barley, FOIA administrator, Federal Bureau of Prisons, June 30, 1997 (forty-four alleged sexual assaults in 1996, six of which were confirmed); letter to Human Rights Watch from Elizabeth M. Edson, chief, FOIA/PA Section, Federal Bureau of Prisons, October 19, 1998 (sixty-six reported sexual assaults in 1997); letter to Human Rights Watch from Katherine A. Day, chief, FOIA/PA Section, Federal Bureau of Prisons, April 18, 2000 (stating that the FBOP does not maintain statistics on inmate-on-inmate rape).

354.Struckman-Johnson, *ASexual Coercion*, @p. 67. The survey had a 30 percent return rate, so it is possible that overall rates of victimization were lower than 22 percent. But for several reasons, including the fact that staff and inmate estimates of the incidence of these abuses correlated closely with

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the actual numbers found, the researchers believe that the 22 percent figure is reasonably accurate. Ibid., p. 74.

355.Ibid., p. 71.

356.See chapter II for a discussion of the numbers of prison inmates nationally. Stephen Donaldson, the late president of Stop Prisoner Rape, made a similar estimate in 1995 on the basis of previous academic studies. He concluded that 119,900 male prison inmates as well as many thousands of jail inmates had been anally raped. Stephen Donaldson, *A Rape of Incarcerated Americans: A Preliminary Statistical Look*, July 1995 (available on the internet at: <http://www.spr.org/docs/stats.html>).

357.Letter to Human Rights Watch from R.B., Kansas, September 28, 1996.

358.Letter to Human Rights Watch from G.M., Ohio, June 27, 1997.

359.Letter to Human Rights Watch from S.K., Washington, February 18, 1997.

360.Even witnesses who inform on the perpetrators of rape are likely to suffer violent retaliation. *See, for example, Gullatte v. Potts*, 654 F. 2d 1007, 1009 (5th Cir. 1981) (inmate who witnessed rape of cellmate informed prison officials, and was later murdered by other prisoners in retaliation).

361.Letter to Human Rights Watch from J.D., Colorado, October 12, 1997.

362.Letter to Human Rights Watch from W.M., Texas, November 24, 1996.

363.Letter to Human Rights Watch, October 22, 1996.

364.Struckman-Johnson, *A Sexual Coercion*, p. 75; see also Peter L. Nacci and Thomas R. Kane, *A The Incidence of Sex and Sexual Aggression in Federal Prisons*, *Federal Probation*, vol. 47, no. 4 (1983), p. 31 (finding that only 32 percent of targets of sexual aggression had done something *A official* to remedy the problem).

365.Helen Eigenberg, *A Male Rape: An Empirical Examination of Correctional Officers' Attitudes Toward Rape in Prison*, *Prison Journal*, vol. LXIX, no. 2, Fall-Winter 1989, p. 47.

366.Davis, *A Sexual Assaults*, p. 13.

367.Human Rights Watch sent an initial request for information to all corrections authorities on April 20, 1997. We sent an additional letter to corrections authorities on June 17, 1998, to request 1997 statistics. Finally we contacted such authorities again on November 16, 1999, to request 1998 data, and on January 19, 2000, to request 1999 data. Follow-up letters were sent and phone calls were made to those authorities who failed to respond to any of these letters. Where necessary, we also filed

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official requests for information under state freedom of information laws.

Four state corrections departments in Alabama, Louisiana, Nevada, and Utah never responded to Human Rights Watch's queries, even though they were contacted on several occasions. For example, Human Rights Watch wrote to the Alabama Department of Corrections on April 20, 1997; June 26, 1997; September 8, 1997 (via fax); February 28, 1998; July 10, 1998 (official request for information under the Inspection and Copying of Records Act (ICRA), section 36-12-40 of the Alabama Code); November 16, 1999, and March 15, 2000 (official request under ICRA).

368. Letter to Human Rights Watch from Cora K. Lum, Deputy Director for Corrections, Hawaii Department of Public Safety, Honolulu, Hawaii, March 19, 1998.

369. Letter to Human Rights Watch from John Gifford, Information Officer, New Hampshire Department of Corrections, July 17, 1997. In a subsequent letter, state officials said that there were no recorded prisoner-on-prisoner rapes or sexual assaults in 1998 or 1999. Letter to Human Rights Watch from Mark L. Wefers, Chief, Internal Affairs, New Hampshire Department of Corrections, December 20, 1999. Similarly, in the state of Alaska (where, it should be recognized, there is a very small prison population), officials responded: "Our Department has not seen a sexual assault between prisoners in over 10 years. We, luckily, have no need to keep statistics, as this has not been a problem." Letter to Human Rights Watch from Denise Reynolds, Deputy Director of Institutions, Alaska Department of Corrections, December 15, 1999. Washington state officials told us that they do not maintain such statistics on inmate-on-inmate sexual assault, "as this type of assault seldom occurs within our institutions." Letter to Human Rights Watch from Tom Rolfs, Director, Division of Prisons, Washington Department of Corrections, May 7, 1997.

370. Letter to Human Rights Watch from Steve Crawford, Facility Captain, Institution Services Unit, California Department of Corrections, Sacramento, California, June 18, 1997; Human Rights Watch telephone interview with Art Chung, Data Analysis Unit, Information Services Branch, California Department of Corrections, Sacramento, California, June 24, 1998.

371. See letters cited above.

372. The Oregon corrections authorities, to be precise, stated that they had received eleven reports of inmate-on-inmate rape or sexual abuse between 1995 and August 1997, which would average out to three to four cases per year. Letter to Human Rights Watch from David S. Cook, Director, Oregon Department of Corrections, August 18, 1997.

373. The Arizona numbers averaged out to more than ten a year, but in 1999 only nine sexual assaults were recorded (compared to nineteen in 1998 and thirteen in 1997). Letter to Human Rights Watch from Richard G. Carlson, Deputy Director, Administration, Arizona Department of Corrections, March 9, 2000.

The Virginia corrections department provided Human Rights Watch with the following

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information: five of seventeen allegations of nonconsensual sexual activity in 1993 were unfounded; four of twelve allegations in 1994; six of eleven in 1995; nine of twenty-two in 1996; five of ten in 1997; seven of fourteen in 1998; and three of thirteen in 1999. Letter to Human Rights Watch from Ron Angelone, Director, Virginia Department of Corrections, May 27, 1997.

374. Illinois informed Human Rights Watch that 130 and 188 inmate-on-inmate sexual assault allegations were reported in 1998 and 1999, respectively, but pointed out that only eight of the 1998 cases had been substantiated, and only twelve of those from 1999 (with four still pending as of April 2000). It also stated that ninety-seven allegations were reported during the two year period before May 1997, only twelve of which had been substantiated. Letter to Human Rights Watch from Odie Washington, Director, Illinois Department of Corrections, May 6, 1997. The letter included the definition of sexual assault under Illinois state law: Any contact between the sex organ of one person and the sex organ, mouth or anus of another person, or any intrusion of any part of the body of one person or object into the sex organ or anus of another person by the use of force or threat of force.

375. Letter to Human Rights Watch from Rhonda Millhouse, Administrative Assistant 4, Office of Prisons, Ohio Department of Rehabilitation and Correction, December 30, 1999.

376. Statistics provided in chart sent by Texas Department of Criminal Justice on April 17, 2000. Viewed another way, the numbers show 162 alleged sexual assaults per 100,000 prisoners in 1999.

377. Eigenberg, Male Rape, p. 47 (the remainder were undecided).

378. Struckman-Johnson, Sexual Coercion, pp. 70-71.

379. See Davis, Sexual Assaults (Philadelphia); Lockwood, *Prison Sexual Violence* (New York); Wooden and Parker, *Men Behind Bars* (California); Nacci and Kane, Sex and Sexual Aggression (federal prisons); Richard Tewksbury, Measures of Sexual Behavior in an Ohio Prison, *Sociology and Social Research*, vol. 74 (1989), p. 34; Christine A. Saum, Hilary L. Surratt, James A. Inciardi, and Rachael E. Bennett, Sex in Prison: Exploring the Myths and Realities, *The Prison Journal*, vol. 75, no. 4 (1995) (Delaware); Struckman-Johnson, Sexual Coercion (Nebraska); Cindy Struckman-Johnson and David Struckman-Johnson, Sexual Coercion Rates in Seven Midwestern Prison Facilities for Men, *The Prison Journal*, vol. 80, no. 4 (2000), p. 379 (four midwestern states).

380. Davis, Sexual Assaults, p. 9.

381. Lockwood, *Prison Sexual Violence*, pp. 17-18. The author defined rape as being forced to participate in oral or anal sex. *Ibid.*, p. 36.

382. Wooden and Parker, *Men Behind Bars*, p. 227.

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383. Tewksbury, A Measures of Sexual Behavior, @p. 36; Saum et al., A Sex in Prison, @p. 427.

384. Struckman-Johnson, A Sexual Coercion Rates, @pp. 383, 385.

385. The studies cited are not exhaustive of the research on prisoner-on-prisoner sexual abuse, but in general represent the most comprehensive and direct examinations of the topic. Several other studies have been conducted; their findings are equally inconsistent. For example, a study of state prisons in North Carolina, based on the records of disciplinary hearings and interviews with prison superintendents, found an extremely low rate of sexual assault, but its methodology is obviously vulnerable to criticism. Dan A. Fuller and Thomas Orsagh, A Violence and Victimization within a State Prison System, @ *Criminal Justice Review*, vol. 2 (1977), p. 35. A study of an unnamed maximum security prison in an Eastern state, in contrast, concluded that there were at least forty sexual assaults per year in the facility, which had a daily population of some 200 inmates. The data on assaults in that study, however, came from a small number of inmates, as well as from a review of prison records and conversations with staff and other prisoners. Leo Carroll, A Humanitarian Reform and Biracial Sexual Assault in a Maximum Security Prison, @ *Urban Life*, vol. 5, no. 4 (1977), p. 417.

386. Saum et al., A Sex in Prison, @p. 421.

387. Ibid., p. 427.

388. Letter to Human Rights Watch from A.C., Arizona, March 23, 1997.

389. Letter to Human Rights Watch, September 5, 1996.

390. Affidavit of James Agan, November 14, 1990.

391. Affidavit of Philip Bagley, December 6, 1990.

392. Letter to Human Rights Watch, September 5, 1996.

393. Florida House of Representatives, Ad Hoc Subcommittee on Management Oversight of the House Committee on Corrections, Probation and Parole, Final Report, October 1980, p. 4.

394. Ibid.

395. The officer continued: A[E]verybody that is willing to tell the truth knows this to be the truth and the man doesn't have any chance at all unless he's willing to fight . . . . [Unless he has friends to protect him,] why he'll get raped within the first 24 to 48 hours. That's about standard. @ Another officer explained: A A young, slim, slender kid, probably his first time in an institution like that, after he's been there two or three days, he's bound to get raped. @ Several officers used the words A a daily occurrence @

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when asked about the frequency of rape in their facility. Ibid.

396.E-mail communication to Human Rights Watch, July 28, 1997.

397.Although few past studies have specifically examined correctional authorities' response to prisoner-on-prisoner rape, most commentators agree that little has been done to address the problem. See, for example, Robert W. Dumond, "Inmate Sexual Assault: The Plague That Persists," *The Prison Journal*, vol. 80, no. 4 (2000). Dumond notes: "Although the problem of inmate sexual assault has been known and examined for the past 30 years, the body of evidence has failed to be translated into effective intervention strategies for treating inmate victims and ensuring improved correctional practices and management." Ibid., p. 407.

398.Arkansas corrections authorities give a course designed to train correctional personnel to recognize and prevent potential sexual abuse among the inmate population and to intervene quickly and efficiently in instances of suspected, actual, or on-going abuse. The staff training manual on the topic is clear, detailed, and includes extremely useful guidelines as to how prison employees should react to instances of known or suspected sexual abuse. Arkansas Department of Correction, "Sexual Aggression in Prisons and Jails: Awareness, Prevention, and Intervention" (undated manuscript). The manual itself says the course is eight hours long, although the training academy manual says it lasts four hours.

The Nebraska correctional authorities, in their response to our 1997 survey, stated that they were in the process of defining and implementing a formal sexual assault prevention program for both inmates and staff. Letter to Human Rights Watch from Harold W. Clarke, Director, Nebraska Department of Correctional Services, July 10, 1997. The department did not respond to any of our subsequent requests for information.

399.Massachusetts is one of the few states that provided such a protocol, titled the "Inmate Sexual Assault Response Plan," which came into effect in October 1998. It covers the appropriate staff reaction to incidents of sexual assault, evidence collection, inmate medical care, reporting procedures, witness interviewing, seeking of criminal charges, and psychological evaluation and counseling. Massachusetts Department of Correction, "Inmate Sexual Response Plan," 103 DOC 520 (October 1998). In a welcome step, the department trains certain staff members to be Certified Sexual Assault Investigators.

The Federal Bureau of Prisons, charged with the management of one of the largest prison populations in the country, has also established a comprehensive protocol of this sort. It is designed to provide guidelines to help prevent sexual assaults on inmates, to address the safety and treatment needs of inmates who have been sexually assaulted, and to discipline and prosecute those who sexually assault inmates. Federal Bureau of Prisons, "Program Statement: Sexual Abuse/Assault Prevention and Intervention Programs," PS 5324.04, December 31, 1997.

Connecticut has a sexual assault response protocol that was drafted in December 1996. The protocol covers staff response, evidence collection, medical treatment, mental health treatment, and

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inmate housing placement. It is aimed at prison medical practitioners, however, rather than the correctional officers who are generally responsible for the initial response to claims of sexual abuse. AHealth Services: Inmate Sexual Assault/Rape Protocol,@December 11, 1996.

400.The survey found that only six correctional departmentsCIdaho, Michigan, New Mexico, North Dakota, Oregon and TennesseeChad specifically proscribed sexual harassment among male inmates. In addition, a few states generally barred harassing behavior, and several other states barred certain forms of harassment. Arizona and Nebraska were alone in punishing inmates for Apressuring@ others for sex. See James E. Robertson, ACruel and Unusual Punishment in United States Prisons: Sexual Harassment among Male Inmates,@*American Criminal Law Review*, vol. 36 (Winter 1999), p. 45.

401.See Human Rights Watch, *All Too Familiar*, p. 5.

402.Arkansas Department of Correction, ASexual Aggression in Prisons and Jails: Awareness, Prevention, and Intervention@(undated manuscript), p. 4.

403.*Farmer v. Brennan*, 511 U.S. 825, 841 (1994).

404.See, for example, *Ginn v. Gallagher*, 1994 U.S. Dist. LEXIS 16669 (1994) (summary judgment for defendants granted); *Dreher v. Roth*, 1993 U.S. Dist. LEXIS 209 (1993) (summary judgment for defendants granted).

405.North Carolina General Statutes, Chapter 143B-262.2.

406.Letter to Human Rights Watch from G.M., Ohio, June 27, 1997.

407.Undated attachment to Letter to Human Rights Watch from Ron Angelone, Director, Virginia Department of Corrections, August 21, 1997.

408.Unfortunately, included in the Arkansas materials is a sentence that perpetuates the myth that male victims of rape thereby lose their Amanhood.@ In a section aimed at warning potential rapists against committing the act, it says: APut yourself in the [victim=s] place for just a minute. No matter who he is, the most valuable thing a man has is his manhood, and you want to rob him of this.@ Arkansas Department of Correction, ASexual Aggression in Prisons and Jails: Awareness, Prevention, and Intervention@(undated manuscript), p. 48.

409.It was not clear, however, whether this handbook was only used in a single facility, or more generally. Attachment to Letter to Human Rights Watch from Donald N. Snyder, Jr., Director, Illinois Department of Corrections, April 7, 2000.

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410.Letter to Human Rights Watch from R. Alan Harrop, Mental Health Director, Division of Prisons, North Carolina Department of Correction, September 16, 1997.

411.Human Rights Watch has previously documented abuses that occur in supermax prison units, including the fact that a lack of due process in assignment to such units means that prisoners may wrongly end up in them. See Human Rights Watch, *Cold Storage: Super-Maximum Security Confinement in Indiana* (New York: Human Rights Watch, 1997). In other words, not all prisoners housed in supermax units are actually the worst of the worst, as proponents of such units like to claim. Indeed, Human Rights Watch has even found rape victims taking refuge in such units, having purposefully broken prison rules in order to escape to a highly regulated and secure environment.

412.Mark Arax, "Ex-Guard Tells of Brutality, Code of Silence at Corcoran," *Los Angeles Times*, July 6, 1998.

413.Ibid.

414.Mark Gladstone and Mark Arax, "Prison Guards Can Consult Lawyers Prior to Questioning," *Los Angeles Times*, September 25, 1998.

415.Letter to Human Rights Watch from B.J., Connecticut, September 23, 1996.

416.Letter to Human Rights Watch, November 7, 1996.

417.Human Rights Watch telephone interview, August 6, 1997.

418.Jim Yardley, "Escape Prompts Scrutiny of Texas Prison System," *New York Times*, January 11, 2001 (quoting Brian Olsen, deputy director of the American Federation of State, County and Municipal Employees, which represents roughly one-sixth of the state's correctional officers).

419.Letter to Human Rights Watch from K.M., Florida, June 18, 1999.

420.Letter to Human Rights Watch from D.A., Texas, September 18, 1998.

421.Human Rights Watch interview, Texas, March 1999.

422.Letter to Human Rights Watch from L.T., Texas, February 19, 1997.

423.Letter to Human Rights Watch from J.G., Florida, September 4, 1996.

424.Letter to Human Rights Watch from S.H., Texas, September 10, 1996 (excerpt from legal pleadings).



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425. See Nacci and Kane, *Sex and Sexual Aggression in Federal Prisons*, p. 16.

426. Past studies confirm this point. See, for example, Lockwood, *Prison Sexual Violence*, p. 55; Helen M. Eigenberg, "Rape in Male Prisons: Examining the Relationship Between Correctional Officers' Attitudes toward Rape and Their Willingness to Respond to Acts of Rape," in Michael Braswell et al., 2d ed., *Prison Violence in America* (Cincinnati, Ohio: Anderson Publishing, 1994), p. 159 (stating that prison staff seem to offer little assistance to inmates except the age-old advice of "fight or fuck"); Lee H. Bowker, *Prison Victimization* (1980), p. 13 (noting that correctional staff tell inmates to fight it out); Weiss and Friar, *Terror in the Prisons*, p. 25 (describing how an officer advised an inmate, "Go back . . . and fight it out").

427. Letter to Human Rights Watch from D.A., Nebraska, September 6, 1996.

428. Letter to Human Rights Watch from L.L., Ohio, August 10, 1997.

429. Texas was the only state that provided precise numbers regarding criminal prosecutions. In 1997, the Texas correctional department stated: "Since 1984, Internal Affairs has investigated a total of 519 cases [of inmate-on-inmate sexual assault]. Four cases have resulted in prosecution, with the guilty party receiving an additional prison sentence." Letter to Human Rights Watch from Debby Miller, executive services, Texas Department of Criminal Justice, May 19, 1997. The department did not provide specific numbers in response to our 1998 and 1999 queries. In 1998, for example, Human Rights Watch was told that "our Internal Affairs Division is not always notified by the prosecuting attorneys as to the outcome of these cases, [so] we do not have the precise number of cases that are prosecuted and result in an additional prison sentence." Letter from Debby Miller, executive services, Texas Department of Criminal Justice, June 29, 1998.

430. Letter to Human Rights Watch from Terry Carlson, Adult Facilities Support Unit Director, Minnesota Department of Corrections, August 26, 1997.

431. Typical is the response of Oklahoma correctional authorities: "Our reports do not list the felony charges filed in district court so we cannot confirm whether charges have been filed, but it does not appear to be routine." Letter to Human Rights Watch from James L. Saffle, Oklahoma Department of Corrections, June 5, 1997. Similarly, Rhode Island correctional authorities told us that they had no statistics on actual convictions. Letter to Human Rights Watch from Ashbel T. Wall, II, Director, Rhode Island Department of Corrections, April 25, 2000.

432. Letter to Human Rights Watch from J.C., Texas, December 16, 1998.

433. *Billman v. Indiana Department of Corrections*, 56 F. 3d 785, 790 (1995). For an instructive shock, change the word "prisoners" in that sentence to denote any other group: women, Native Americans, or homeowners, for example.

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434.*Farmer v. Brennan*, 511 U.S. 825, 839 (1994) (Thomas, J., concurring in the judgment) (quoting *McGill v. Duckworth*, 944 F.2d 344, 348 (7th Cir. 1991)).

435.*See LaMarca v. Turner*, 662 F. Supp. 647 (S.D. Fla. 1987) (granting \$201,500 in damages, as well as injunctive relief, in class action brought by inmates who were gang raped at the Glades Correctional Institution), *aff'd in part and vacated in part*, 995 F. 2d 1526 (11th Cir. 1993), *cert. denied*, 510 U.S. 1164 (1994); *Redman v. County of San Diego*, 896 F. 2d 362 (9th Cir. 1990) (affirming district court direct verdict that a small, eighteen-year-old inmate who was raped by his cellmate and others did not prove that he had been treated with deliberate indifference), *aff'd in part, rev'd in part*, 942 F.2d 1435 (1991) (en banc) (reversing district court, finding that a reasonable jury could have concluded that prison officials had acted with deliberate indifference), *cert. denied*, 502 U.S. 1074 (1992).

436.*Chandler v. Jones*, 1988 U.S. Dist. LEXIS 693, \*3 (E.D. Mo. 1988). It thus absolved the prison officials of responsibility, stating that the officials ~~A~~made the best of a bad situation.®

437.*See, for example, McGill v. Duckworth*, 944 F. 2d 344 (7th Cir. 1991) (reversing verdict in favor of raped prisoner, reasoning that legislatures, architects, taxpayers and judges all bear a share of the blame for prison abuses). The decision in *Kish v. County of Milwaukee* reflects similar thinking. Ruling against two inmates who were sexually assaulted, the court suggested that sexual assault was extremely common in the overcrowded jail under consideration, but that prison officials could not be blamed for the problem. It explained: ~~A~~the assaults were a result of the physical layout and overcrowding of the jail, both matters beyond the control of the defendant.® *Kish v. County of Milwaukee*, 441 F. 2d 901, 905 (7th Cir. 1971).

438.*Butler v. Dowd*, 979 F. 2d 661 (8th Cir. 1992).

439.*James v. Tilghman*, 194 F.R.D. 408 (D. Conn. 1999). At the suggestion of defense counsel, the court revised the award, giving the plaintiff one dollar in nominal damages.

440.Human Rights Watch interview, Texas, October 1998. The expression ~~A~~ride,® in Texas prisons, means to pay protection money or sexual favors or both to another inmate.

441.Inmate Grievance Form, December 4, 1996. The grievance concluded: ~~A~~I fear for my life here on [this unit] and request that I be placed in ad seg protective custody for my own protection. Thank you! Your prompt response to this matter would be greatly appreciated.®

442.Human Rights Watch interview, Texas, October 1998.

443.*Ibid.*

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444.Ibid.