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RAPE IN PRISON:
A HIDDEN EPIDEMIC

BY

MARK L. WEFERS

BA, University of New Hampshire, 1973

THESIS

Submitted to the University of New Hampshire

in Partial Fulfillment of

the Requirements for the Degree of

Master of Arts

In

Justice Studies

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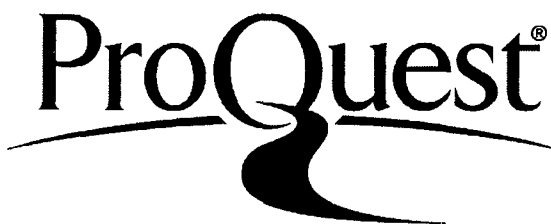
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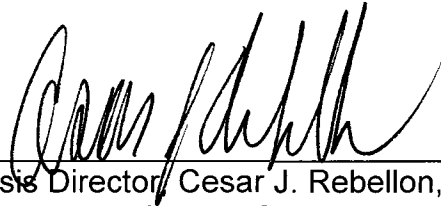
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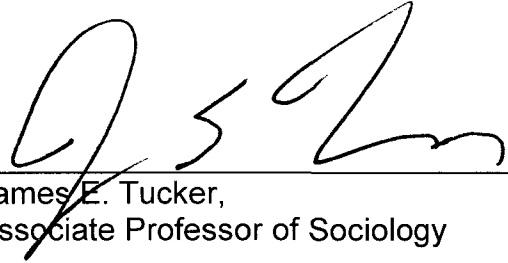
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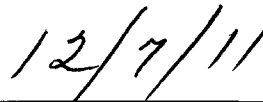
Thesis Director, Cesar J. Rebellon,
Associate Professor of Sociology



James E. Tucker,
Associate Professor of Sociology



Donna M. Perkins,
Clinical Assistant Professor
of Justice Studies



Date

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ABSTRACT
RAPE IN PRISON:
A HIDDEN EPIDEMIC

by

Mark L. Wefers

University of New Hampshire, December, 2011

America's prisons are filled. The war on crime has created a bulging prison system. Inside the jails and prisons, crime – especially rape – occurs every day. Traditionally, the rape of prisoners in the American prison system was either ignored or the subject of bad jokes. Recently, serious inquiry has begun into the incidence of sexual assault behind prison walls. This study examines prison rape. Using data generated as a result of the Prison Rape Elimination Act, along with statistics from national databases and testimony from victims of prison rape and their advocates, this study suggests that the incidence of rape in prison in this country is significantly higher than the occurrence of sexual assault on the street; that prison rapists and victims are not defined by gender; that prison rape can be a serial crime; and that this epidemic has profound and enduring consequences for its victims - and society.

INTRODUCTION

America's prisons are filled (Reiman 2007). The War on Drugs, the War on Crime, and the War on Child Predators are among the factors that account for the nation's bulging prison system (Walker 2006). Inside the penitentiaries, crime continues (Currie 1998). Crimes that occur on the street: murder, mayhem, and rape (especially rape, as defined in the broad sense of the term to include all victims and perpetrators of sexual assault, irrespective of gender), occur in the country's correctional facilities – every day (Dumond 2000).

Recently, serious inquiry has begun into the incidence of sexual assault behind prison walls. Foremost among the questions being addressed seems to be the issue of prevalence – how common is rape in prison? However, as that issue is being addressed, the question, "What exactly is rape?" becomes evident. Inevitably, those questions are followed by "Who are the rapists?" "Who are the victims?" "Why is it happening?" and most importantly, "How can it be stopped?"

This study examines prison rape in the context of the above questions. It may be unique among independent studies of this topic in that it examines, both quantitatively and qualitatively, sexual violence of both male and female inmates by both other inmates and correctional staff. Prior studies of prison rape, while not plentiful, are examined and discussed to provide a historical perspective to some of the present day thinking about prisons, and punishment, in the twenty-

first century. Then, using data generated as a result of the Prison Rape Elimination Act (PREA), along with statistics from the Uniform Crime Reports (UCR), the National Incident-Based Reporting System (NIBRS), and the National Crime Victimization Survey (NCVS), as well as testimony from victims of prison rape and their advocates, this study suggests that the incidence of rape in prison in this country is significantly higher than the occurrence of sexual assault “on the street,” and that rape in prison is a hidden epidemic.

The epidemic is not only ubiquitous; it is staggering in its depravity. While many inside and outside of criminal justice circles may realize that rape happens frequently in prison, fewer may currently be aware of the breadth of different relationships among perpetrators and victims; the frequency of series victimizations; or the degree to which there exist extremely long-term consequences for victims and society writ large years after the victimization incidents themselves have passed.

The public perception of sexual assault in confinement facilities may be one involving a male inmate raping another male inmate. However, this study suggests that although substantial evidence exists to show that such victimization is widespread, there is also, especially lately, statistical and qualitative data indicating that the potential to be a victim or a perpetrator is not limited by one’s gender, and that perpetrators of rape of persons in custody are not only other inmates, but also correctional officers and other correctional staff, and in one case examined, police officers.

This study also suggests that there is evidence of frequent series sexual victimizations of inmates in confinement facilities. Testimony is heard here from inmate victims and their advocates at public hearings related to PREA, and elsewhere, about being abused on a daily basis. The exposure to rape while incarcerated is shown to exist from the first hours, or even minutes, of being locked up, and is demonstrated to apply to inmates who are in jail overnight as well as to those serving long prison sentences. Some of that testimony is from victims whose efforts to protect themselves by alerting authorities proved to be worse than useless, in that their complaints actually resulted in them being victimized more often and more violently than they had been prior to making their complaints known to correctional officials. The history of prison rape is shown to be a history of a crime whose victims have been powerless to stop their victimization, a victimization that occurs, in many cases, again and again and again.

Finally, this study suggests that there exist extremely long-term consequences for victims and society years after the sexual victimization incidents themselves are over. The physical brutality of many of the sexual assaults examined here can be unnerving. For some inmate victims, suicide can be a viable alternative to being raped in prison. Other victims take refuge in substance abuse and commit more crimes after being discharged from correctional facilities where sexual lawlessness is the norm. Mental illness is shown to be both a cause and effect of rape in prison. Public health issues like AIDS follow inmates out into the community when they make parole. The

physical and emotional injuries suffered by inmate rape victims transfer and multiply as those offenders are released back into society and re-victimize their spouses, children, and neighbors.

Collectively, society may realize that rape in prison happens frequently, but may only be aware to a lesser degree of the variety of different relationships among perpetrators and victims, the serial nature of that victimization, and the long-term consequences it can have for victims and others. Rape in prison is a hidden epidemic, and an expensive one, and it may be that the bill is about to become due.

The final section of this study contains recommendations for dealing with and attempting to eliminate or reduce prison rape. These recommendations are consistent with, and to some extent, over and above recommendations that have been made by others as a result of the passage of the PREA. Some of the recent data on prison rape that is examined is from court records of civil lawsuits that were filed by inmate victims against perpetrators and government officials who were found to be “deliberately indifferent” to the victimization of prisoners for whom they were responsible. One of the findings of the PREA legislation is that the prevalence of prison sexual assault constitutes a violation of the Constitutional rights of the victims. This study goes further than that and suggests that, ultimately, these kinds of lawsuits, taken against federal, state, and other authorities in charge of confinement facilities, may be the most effective means of eliminating the centuries-old scandal of rape in prison.

CHAPTER I

LITERATURE REVIEW

For most of the history of the American prison system, a period encompassing about two centuries, the rape of prisoners (primarily male prisoners) was either ignored or the subject of bad jokes (Eigenberg 1989, Man and Cronan 2001). To the extent that prison rape received any attention from lawmakers or the public at large, a somewhat cavalier attitude prevailed, holding that inmates only got what they deserved; that is to say, that sexual assault was part of the price one paid for going to prison. Historically, complaints from inmates about conditions of incarceration have been answered by correctional staff with a phrase something like, "If you don't like it, don't come to prison" (Struckman-Johnson and Struckman-Johnson 2000).

What is Rape?

Black's Law Dictionary defines rape, in criminal law, as, "the unlawful carnal knowledge of a woman by a man... without her consent..." (Black 1968). The crime of rape has long been legally defined and considered in general to be an offense against women. The word "rape" has served and continues to serve as a shorthand definition of the crime of sexual assault. Until recently, an elemental presumption in a discussion about rape would be that the matter would involve a female who was the victim of a sexual assault. Equally presumed in such a discourse would be that the perpetrator of the assault was a male. Even

the Uniform Crime Reports, long the nation's leading measuring device of crimes, define rape as, "carnal knowledge of a female forcibly and against her will" (FBI CJISD 2007). In any case, rape has not generally been thought of as an event wherein the victim could be a male or the perpetrator could be a female. This is a phenomenon that is starting to change.

Why Do Prisoners Rape?

The phenomenon of prisoner on prisoner rape exists within an elaborate subculture in prisons, which includes (unwritten) rules enforced in an inmate-created language that govern power relationships among inmates, of which sexual relationships are a part (Hensley et al. 2003). Prison slang identifies an inmate's sexual practices as well as his position in the inmate sexual hierarchy (Dumond 1992). Fleisher and Kriener's national study (2006) of prison sexual violence finds that, with few exceptions, this inmate sexual lexicon is understood throughout the country. For example, the term "Boxing Betty" refers to a legendary inmate who was gang-raped by other inmates, and who then worked out in the prison gym until he was able to physically and sexually assault his attackers; while the phrase "Slow Turn-Out" signifies a process that takes longer than usual to coerce an inmate into sexual submission. An essential element of the sexual subculture in men's prisons is a concept of masculinity in which aggression is the dominant theme (Man and Cronan 2001). Inmate versus inmate sexual assault is thought to be more about power and control than sexual gratification (Robertson 2003).

In “Introduction: The History of Prison Sex Research,” Hensley, Struckman-Johnson and Eigenberg (2000) attribute the beginnings of research into sex inside prisons to early twentieth century studies of liaisons between females in custody, particularly relationships, especially inter-racial relationships, between young women in juvenile settings. Hensley, Struckman-Johnson and Eigenberg criticize early studies because those studies made assertions that were unsupported by evidence and generally lacked empirical data, including assertions that these liaisons were “unnatural” and could be divided into four types: pseudo families, friendship, pseudo homosexuality, and lesbianism. These assertions in those early studies fall short in explaining the brutal sexual violence experienced by women inmates quoted in this study, and fail to account at all for the sexual exploitation endured by female inmates at the hands of both male and female correctional staff. Hensley, Struckman-Johnson and Eigenberg point out the relative dearth of studies aimed at two groups most likely to have first-hand knowledge about sex in prison – inmates and correctional officers. Later research sought to explain why inmates sexually assault other inmates.

a) Importation v. Deprivation Theory

While not necessarily a concern for the American public, rape in prison has, nonetheless, been of interest to academics for some time (Chonco 1989). Chonco cites two schools of thought on the origins of prison violence. One group, advocating the Importation Model, holds that a prisoner’s life prior to being locked up will influence his or her prison experience (Man and Cronan 2001). In other words, if someone is violent in free society, and is subsequently imprisoned for it,

it follows that they will still be violent when they get to prison (Fleisher and Krienert 2006).

The second group Chonco (1989) cites and seems to support, subscribes to what is sometimes referred to as Deprivation Theory (Fleisher and Krienert 2006), which holds that the deprivation of sexual contact with members of the opposite gender, along with the lack of creature comforts one might enjoy in free society - just part of the sheer misery that constitutes life in custody - result in prisoners resorting to sexual violence as a means to just get through the day.

Valid arguments can be made in support of both the Importation Model and the Deprivation Theory, and it is not necessary to reject one in order to subscribe to the other. Ibid. Fleisher and Krienert suggest that, ultimately, a unified “holistic” approach, or a “single, macro-theory positing a single prison culture with gender-based behavioral variations” is the preferred method of research, in the interest of parsimony, by way of designing preventive interventions against prison sexual violence, and in order to take advantage of the research that has already been done on rape in prison.

b) Black Rage Theory

Carroll (1974) finds that most prison sexual exploitation by inmates is based on race, and directly related to the racism in free society, except that in prison it is the blacks who are victimizing the whites, rather than the other way around. Likewise, Man and Cronan (2001) argue that, in prison, the power relationship between blacks and whites, at least when it comes to inmate rape, has been “flipped.” Jones and Schmid (1989), two researchers (one a former inmate) from

the Midwest, also “accept” that “prison rape has its roots in the racism of the larger society.” Dumond (2003) reports that race has been “identified” as a “factor” in prison rape, citing several studies that do so, most of which are thirty or more years old, while Hensley, Koscheski and Tewksbury (2005) describe race as “one of the most strongly established correlates of prison sexual assaults.”

Not all research supports the black rage theory. On the issue of race in Chonco’s (1989) study of prisoner on prisoner sexual assault, he examines and rejects theories of black rage seeking to explain black on white sexual aggressiveness, and concludes that although race may be a minor factor, it is weakness, or at least perceived weakness, that is more likely to determine who becomes a victim. Jenness et al. (2007) in their study of sexual assault in California prisons, poll inmates who overwhelmingly report that prison sexual violence is rarely racially motivated, although general prison violence is “more often about race.” Smith (2008) acknowledges widespread support among scholars and correctional professionals in support of the black rage theory; however, she finds that factors including the serious underreporting of sexual offenses in confinement, coupled with the disproportionate number of black inmates and the cultural norms of those inmates that would keep them from identifying themselves as victims, suggest that research data that support black rage theory should be viewed “cautiously.”

c) Perceived Weakness/Power Theory

There is evidence that certain identifiable groups within confinement facilities are more likely than others to be victimized (Dumond 2003). Making the point that any inmate can be victimized, Dumond (2000) endorses the concept that certain groups of prisoners may be more prone to exploitation, including a group who have contributed to the rising prison populations in recent times - the mentally ill. Laderberg (1998) argues that female inmates with previous histories of sexual abuse are especially vulnerable to male correctional officers intent on exploiting them.

Chonco (1989) finds that upon arrival in prison, youth and physical appearance, such as feminine features, can be indicators of which male inmates are most likely to be sexually assaulted. In the section of his article headed, "The Anatomy of a Set-up Process," Chonco describes in detail the intricately organized structures in prisons that supply a seemingly unending line of new inmate victims to the veteran prisoners who exert control behind prison walls. Observation, selection, testing, and approach are the key steps in the set-up process, a sort of involuntary employment agency for new prisoners destined to become the sexual property of more experienced inmate-bosses.

The study by Jenness et al. (2007) of the California prison system finds that 4.4% of the portion of that state's male inmate population that was studied as a random sample from six prisons had been sexually victimized while incarcerated. However, a purposive sample of "transgender" inmates, whose gender histories are not otherwise described and who were housed in the same prison, are

identified in the California study as a particularly vulnerable segment of the prison population, subject to a rate of victimization as high as 59% - about 13 times the victimization rate of the general California male prison population.

Categories of Prison Rape

a) The Concept of Consent in a Culture of Coercion

“All choices and relationships are so constrained and limited in the unfree world of the prison that what is normally meant by such terms as ‘free’ or ‘voluntary’ does not apply.” – James Gilligan, MD, former director of mental health of the Massachusetts prison system (Mariner 2001).

“What is ‘consent’ in the prison context given the obvious power imbalance between a woman and her male guard...A relationship between an inmate and a guard is presumptively coercive...so-called indicators of consent...could as well mean the opposite...[the victim] does not disclose the relationship or denies it when asked precisely because of her vulnerability to the guard’s retaliation; she continues the relationship without making a formal complaint, not because she wants to but because she is afraid to stop it, not unlike a woman suffering from domestic abuse...Sex in prison is a complex and risky phenomenon; ‘consent’ is not easy to determine amidst power dynamics between male captors and female inmates” – Judge Nancy Gertner, United State District Court for the District of Massachusetts (Chao v. Ballista et al. 2011).

How does one define consent in a culture of coercion? In their article on the history of research into sex in prison, Hensley, Struckman-Johnson and

Eigenberg (2000) deplore the lack of substantive research into the topic throughout most of the twentieth century, particularly the lack of study into consensual sex behind prison walls. They identify a study by Davis, conducted in the late 1960s, as the first serious look at coercive sex in a prison environment. That study, which focused on instances of staff sexual misconduct in Philadelphia jails and sheriffs' vans, was "groundbreaking" (Walton et al. 2009) because of its shift from anecdotal to scientific scholarship (Davis interviewed over three thousand inmates), and its use of polygraph examinations of inmate victims and witnesses (Hensley, Koscheski and Tewksbury 2005).

The approach of Hensley, Struckman-Johnson and Eigenberg (2000) generally, is to divide their research into studies of consensual and non-consensual sex. They discuss the defined roles, dominant and submissive, of female inmate sexual partners, as well as other power relationships inside prison walls that go along with sexual alliances. The authors examine male prison sex in terms of homosexuality, from a perspective that seeks to determine the prevalence of male on male inmate sex that occurs almost out of necessity (in light of the absence of potential female partners), rather than out of choice. Saum et al. (1995), in their study of male Delaware prison inmates, find that the incidence of sexual encounters among this group is, more often than not, consensual, rather than coerced. However, the World Health Organization points out that sexual coercion can take place over a "whole spectrum of degrees of force," including physical force, psychological intimidation, extortion, the use of

alcohol or drugs, or when the victim is mentally unable to give consent (Krug et al. 2002).

Smith (2003) finds that, by 2003, twenty-one of the states precluded correctional staff accused in criminal cases of sexual misconduct with inmates from claiming, as a defense, that the inmate consented (although three other states made such conduct a crime for the inmates). Ashbel T. Wall, the Director of Corrections for the State of Rhode Island, testifying before Congress in 2003 in support of legislation aimed at curbing sexual abuse in confinement facilities, stated, "There is no such thing as consensual sex between staff and an inmate" (U.S. Congress 2003). But generally, by 2005, the questions of whether or not consensual sex can take place between inmates, or between staff and inmates, were still "unresolved" (Smith 2005).

Moster and Jeglic (2009) surveyed state prison wardens around the country to get their perspectives. Those authors clearly take a position on the consent argument, while acknowledging a coercion continuum in prison sexual relationships, by stating that "there can be no prevention of prison rape without proper classification of the activity as nonconsensual."

b) Inmate v. Inmate/Staff v. Inmate

Sexual assault inside prisons and jails can also be categorized by rapes by inmates against other inmates, and rapes by correctional staff against inmates. The incidence of sexual assault by inmates against staff members is not examined here, except to note one California study finds such assaults were rare in that state until 1999, when a significant increase was observed (Sumner and

Matsuda 2006). Dumond (2000) describes staff sexual victimization of inmates as a “cancer,” and points out that such staff misconduct varies from those incidents during which staff members who are “vulnerable” are “manipulated” by inmates into having sex with them, to those during which staff members use physical force and violence to force prisoners to submit, a situation Dumond calls “intolerable.”

Perhaps a somewhat unexpected result of an examination of the incidence of sexual exploitation by correctional staff members against inmates is the extent to which such acts are committed by female employees – against both male and female inmates (Layman, McCampbell and Moss 2000). For example, 40% of the substantiated staff to inmate sexual misconduct cases in a 2006 study of the nation’s adult correctional facilities were perpetrated by women, although the available data does not break down the gender of those women’s victims (Beck, Harrison and Adams 2007). One prison warden suggested that this phenomenon may be partly because (in cases involving male prisoners) some of these female staff members “may have been prone to fall in love with male inmates” (McFarland and Ellis 2008).

c) Gender of the Victim/Gender of the Perpetrator

Another approach to the study of prison rape is to divide the research into separate examinations of violence on the basis of the genders of the victims and perpetrators. Fleisher and Krienert (2006) suggest that early prison research focused on male prisoners, and the homosexuality and sexual violence that occurred among those inmates. The authors observe that subsequent studies of

women in prison concentrated on the social relations, rather than the sexual violence, between female prisoners.

Some studies suggest that gender may have some effect on sentencing outcomes and that male perpetrators receive harsher sentences than do their female counterparts, particularly when the victim is a female (Curry, Lee and Rodriguez 2004). This may merit examination when it comes to looking at possible sentencing disparities of correctional staff who abuse female inmates versus those who abuse male inmates.

Although a substantial amount of literature is beginning to be available about prison rape, there still seems to be few studies published about female correctional staff perpetrators and their inmate victims, particularly their male inmate victims. At least two cases involving incidents of female correctional officers sexually exploiting an adult male inmate came to public attention in 2006 in Madison, Wisconsin. Two women, both officers at the time of the incidents, were criminally charged with having sex with the same male inmate inside the prison. According to a television report, the alleged perpetrators offered a defense that they had been seduced by the inmate (WISCTV.com 2006).

Prison Rape: How Prevalent Is It?

Research into prison rape tends to ponder a central question: "How prevalent is it?" Moster and Jeglic (2009) waiver on their assessment of the extent of prison rape in the nation's prisons, reporting that the results of their polling of prison wardens would classify the phenomena as "low base rate events"; however, they acknowledge that those statistics may be due to the low

rate of reporting by inmates to the wardens. Additionally, Moster and Jeglic concede that despite the assurances of anonymity in their survey instrument, the wardens, the source of their data, may have been influenced by political and legal realities in their answers about what they thought was going on in their own institutions.

On December 20, 1999, the author of this study, as Chief of Internal Affairs for the New Hampshire Department of Corrections, responded to a query from Human Rights Watch, the international group that established a Women's Rights Project in 1990 to "monitor violence against women and gender discrimination throughout the world" (Thomas et al. 1996), with a letter that stated there were "no recorded prisoner-on prisoner rapes or sexual assaults in 1998 or 1999" in the New Hampshire prison system (Mariner 2001).

The prevalence of rape in America's prisons and jails is a matter about which there is some disagreement (Robertson 2003). It has been described as "widespread" (Dumond 2003); "rampant" (Man and Cronan 2001); and, specifically concerning the sexual exploitation of female inmates by male correctional officers, "pervasive" (Laderberg 1998). It may be that for every study with findings that minimize its occurrence, another can be found that suggests the problem is out of control. For example, in a study by medical professionals in the Memphis, Tennessee area of 99 male sexual assault victims, inmates accounted for more than four times the number of non-incarcerated victims (Lipscomb et al. 1992).

The disparity in the rates of prison sexual assault identified by different studies suggests that more study is warranted. One nation-wide study conducted entirely by interviewing inmates found that the occurrence of rape in prison is unusual, although the threat of rape is much greater (Fleicher and Krienert 2006). There is evidence that prison rape is vastly under-reported by inmate victims who are ashamed, afraid of retaliation, or simply believe that nothing will be done (Robertson 2003). One study conducted a meta-analysis of other major studies and arrived at an average prisoner sexual assault victimization rate of 1.91%, although many of the surveys examined in that study had findings of double-digit victimization rates (Gaes and Goldberg 2004). An early study, a book co-written by an inmate at a California prison that was used to house openly gay inmates, estimates the rate of sexual victimization there at 14% (Wooden and Parker 1982).

Correctional Staff: Protectors or Facilitators?

One reason proffered in support of the theory that the incidence of prison rape is more prevalent than authorities would like to believe is the idea that correctional officers' responses to inmates' complaints have a negative impact on the frequency of those complaints and the willingness of victimized inmates to come forward. One study, based on the results of interviews with all 40 inmates who were housed at a pre-release center in a large Midwestern state, finds that correctional officers fail to respond to prison rape either because they rely on the rapists to control the other inmates for them, or because they are fearful for their own safety (Chonco 1989). Another study, accomplished with questionnaires

sent to 400 Texas correctional officers selected at random, finds that while some officers do what they can to prevent prison rape; others actually manage inmate behavior by the use of the threat of rape by other inmates (Eigenberg 1989).

By way of comparison to the potential for correctional officers to have an effect on the frequency of rape reports by inmates, Eigenberg cites the improved training and attitudes of police officers in the community towards sexual assault victims between the late 1970s and the late 1980s and the dramatically increased number of sexual assault reports during that time. Eigenberg conducted a survey of 400 Texas Department of Corrections correctional officers. Of the 166 responses she received, over 90% of the respondents stated their belief that rape is not a rare occurrence in prison, and nearly half of the respondents (46.4%) reported they thought that inmates who had consensual sex with other inmates, who were subsequently raped, deserved it. Ibid.

In a subsequent study, Eigenberg (2000) points out that correctional officers are responsible for enforcing the rules in confinement facilities; that they do so by writing disciplinary reports (referred to in some institutions as “tickets”); that any sexual behavior, consensual or not, is forbidden in almost all confinement facilities; and therefore, officers are on the front line in terms of being able to prevent and respond to prison rape. Eigenberg discusses the challenges correctional officers have in this regard. Officers might be less prone to investigate incidents they perceive to be consensual (despite the rules against consensual sex) rather than forced; however, they may have difficulty determining the coercive aspect of sexual incidents that do not appear to be

“rape” at first look. For example, some inmates may participate in what otherwise appears to be consensual sexual activity as a way to avoid other more violent types of encounters. Eigenberg reports that although few officers have any actual experience observing inmates in the act of sex, those officers who participated in her study estimated that about 15% of the inmates under their supervision had been victims of prison rape, using a definition of rape as sexual contact that was neither consensual homosexual activity nor prostitution. Ibid.

The ever-increasing inmate populations of recent years have only exacerbated the reality of prison rape (Dumond 2000). According to Dumond, in his article aimed specifically at prison counselors, the study of prison sexual assault over the last three decades has done little in the way of providing roadmaps for prison officials to prevent sexual exploitation of inmates or to provide treatment for prisoners who have been victimized. Dumond points out that the incidence of sexual victimization in confinement facilities has been difficult to quantify, and that there is a continuum of violence involved in that victimization, from subtle coercion to physically assaultive gang rape. Listing several of the physical and psychiatric injuries likely to be incurred by a sexual assault victim (including suicide, another long-standing problem inside prisons), he observes that most prison counselors have more training in dealing with sexual offenders than treating sexual assault victims. As part of a multi-faceted approach to curb prison sexual violence, Dumond suggests that these counselors, with the proper training, can be part of a solution to what he describes as “America’s Most Ignored Crime Problem.”

CHAPTER II

METHODOLOGY

This study will examine the incidence of sexual assault in America's confinement facilities. Comparisons of that phenomenon to the incidence of sexual assault in the nation's communities, using the genders of the victims and perpetrators as variables, will be attempted in the context of the limitations of the data available from four federally established entities: the Uniform Crime Reports, the National Incident-Based Reporting System, the National Crime Victimization Survey, and the Prison Rape Elimination Act. By making those comparisons, this study seeks to go beyond prior research into prison rape by putting it into the context, perhaps for the first time, of the occurrence of sexual crimes in America's communities.

The data here were taken from reports for the year 2008, the most recent year for which data for this study were available, from the UCR, the NIBRS, the NCVS and the PREA. Using available data from those sources, comparisons will be made involving the following categories

- Incidence of sexual assault in the community compared to incidence of sexual assault in confinement
- Incidence of sexual assault in the community, female victim
- Incidence of sexual assault in the community, male victim
- Incidence of sexual assault in the community, male perpetrator

- Incidence of sexual assault in the community, female perpetrator
- Incidence of sexual assault in confinement, female inmate victim
- Incidence of sexual assault in confinement, male inmate victim
- Incidence of sexual assault in confinement, inmate victim, inmate perpetrator
- Incidence of sexual assault in confinement, inmate victim, staff perpetrator

In addition, data based on published agency records (i.e., UCR, NIBRS, NCVS and PREA) will be discussed in the context of qualitative data provided by testimonies of former inmate victims and others who are quoted here. That qualitative data is included in an attempt to remedy what prior research may not have sufficiently addressed - a linking of the horrendous human misery associated with prison rape to the statistical studies that seek to determine its prevalence.

Quantitative Data

a) Uniform Crime Reports

In 1927, the International Association of Chiefs of Police (IACP), which had started out in 1871 as the National Police Association (Maltz 1997), created a committee charged with the mission to quantify the incidence of crime across the United States (FBI 2004). Detroit Police Commissioner William P. Rutledge, who chaired the committee, sought to use scientific data to calm a public worried by endless press reports about crime (Maltz 1997).

The committee selected seven major crimes to be statistically examined: murder, rape, robbery, assault, burglary, larceny, and auto theft (arson was

added as the eighth crime category in 1979). The seriousness, frequency, and likelihood of these crimes to be reported were the reasons they were selected for study (Maltz 1999). By 1929, the committee collected data on these crimes from forty-three states, Puerto Rico, Alaska, and Hawaii. At the beginning of the following year, the IACP published *Uniform Crime Reports for the United States and Its Possessions*, which was made up of a single table, "Number of Offenses Known to the Police: January 1930." That same year, after an act of Congress, the FBI took over the responsibility for collecting major crime statistics (FBI 2004).

By 1952, the UCR were enhanced with the inclusion of the age, sex, and race of persons arrested. Ten years later, the UCR data were updated to include the age, sex, and race of murder victims. Yet by 2004, the year of the most recent revision of the UCR Handbook, forcible rape was still defined by the national authority on criminal statistics as "the carnal knowledge of a female forcibly and against her will." Ibid.

The information contained in the UCR does not identify the gender of the victim (except murder victims) of the recorded crimes. Sexual assaults against males – by the UCR definition, not "rape," are accounted for in the violent assaults section of the UCR's statistical tables. Attempts to commit rape (of women) by force or threat of force are included in the UCR rape statistics; however, statutory rape (of women) and other sex offenses are not. The UCR statistics count one offense for each female victim of a forcible rape, attempted

forcible rape, or assault with intent to rape, regardless of the victim's age (FBI 2007).

b) National Incident-Based Reporting System

A 1982 study of the UCR Program by the Bureau of Justice Statistics (BJS) and the FBI and a five year project to enhance the then more than fifty-year-old database yielded the National Incident-Based Reporting System. The NIBRS collects information on each reported crime. Under the NIBRS, law enforcement provides data, including victim and perpetrator gender, to the FBI, on each criminal incident of forty-six specific offenses, including the eight major crimes tracked in the UCR (U.S. Dept. of Justice OJP ojp.usdoj.gov/bjs/nibrs).

Although the Justice Department collects victim and perpetrator data from law enforcement agencies through the NIBRS, it does not publish this information or make it readily available to the public (FBI fbi.gov/ucr/faqs.htm), nor does it intend to do so until it obtains a higher level of participation in the program nationally. The Justice Department expanded its collection of crime data regarding the gender of victims and perpetrators of sexual assault with the creation of the NIBRS, which defines rape as the sexual assault of a person, rather than of a woman. However, the participation by the states in contributing information to the NIBRS is more limited than states participating in the UCR (U.S. Dept. of Justice OJP ojp.usdoj.gov/bjs/nibrs). Although the NIBRS holds great potential for the future study of crime, and is expected to eventually replace the UCR, the limited number of law enforcement agencies actively contributing data (owing, at least in part, to the voluntary nature of the program) means that

the ultimate usefulness of the NIBRS remains to be seen (Finkelhor and Ormrod 2004).

c) National Crime Victimization Survey

The National Crime Victimization Survey began in 1973, and constitutes a detailed analysis of crime (FBI fbi.gov/ucr/cius_04/appendices/appendix_04), focusing on victims. Twenty years after the NCVS was begun, after it was no longer considered “inappropriate” for a governmental agency to ask citizens questions about rape, its methodology underwent a major overhaul, including “more direct questions” on rape and sexual assault designed to promote responsiveness by interviewees (U.S. Dept. of Justice BJS 1994). The first set of data in the redesigned NCVS format was published in 1995. The NCVS now collects detailed information on the frequency and nature of major crimes, including rape (FBI fbi.gov/ucr/cius_04/appendices/appendix_04).

Twice a year, the United States Bureau of the Census conducts a nationally representative polling of about 43,000 households (approximately 76,000 people) aimed at quantifying national criminal victimization rates. About 150,000 interviews of persons who are at least twelve years old are conducted every year. The NCVS collects information from victims of crimes regardless of whether or not those crimes were reported to law enforcement, and provides information about the gender of both the perpetrators and the victims they violate. Ibid.

The BJS designed the NCVS to complement, not replace, the UCR. Thus, the two programs have many similarities. Allowing for different collection

methods, the UCR and the NCVS measure some of the same crimes, using substantially the same definitions. Both programs cover rape, and define it “virtually identically,” except that the UCR measures the crime against women only, whereas the NCVS measures it against both sexes. Ibid. The NCVS regularly shows victimization levels higher than the UCR (U.S. Dept. of Justice BJS 1994).

The two programs were created for different reasons. The UCR primarily exists to give law enforcement a reliable set of criminal justice statistics for use in administration and planning. The NCVS provides information about crime, including information about crimes not reported to police and victim and offender data that had not been previously available through the UCR. The NCVS excludes crimes against children under age twelve from its study; the UCR does not make that distinction. Sampling variation in the NCVS and estimating for non response in the UCR may account for some differences between the programs in the data. The UCR generally bases its data on the actual number of offenses reported by law enforcement. The NCVS looks at the characteristics of criminal victimization including crimes not reported to law enforcement. Both programs are useful in understanding and responding to sexual assault in the United States (FBI fbi.gov/ucr/cius_04/appendices/appendix_04).

d) Prison Rape Elimination Act

i. Protected Population

According to Title 45 of the Code of Federal Regulations, Part 46, regarding the protection of human subjects, prisoners are a protected population

when they are the subjects of research conducted or supported by a federal department or agency (National Institutes of Health 2005). Those regulations recognize that the reality of incarceration can affect the ability of inmates to freely and voluntarily consent to participating in research. Accordingly, in such circumstances, research on prisoners is subject to approval and oversight by a properly constituted Institutional Review Board. Ibid.

ii. Purpose of PREA

In 2003, the United States Congress unanimously passed and President George W. Bush signed the Prison Rape Elimination Act, a statutory scheme frequently referred to by the acronym PREA which is intended to eliminate sexual assault within the nation's prisons (Beck and Hughes 2005, Wall et al. 2008). The legislation was filed as a result of joint efforts between human rights, faith-based, and prison rape advocacy groups, across a broad spectrum of political views, just a few years after a similar bill failed to get out of committee (Smith 2008). The PREA bill passed following congressional hearings at which nationally recognized correctional leaders testified to their full support of the concept that sexual assault should not take place in confinement facilities, and their somewhat qualified support of various details in the bill (U.S. Congress 2003).

The purpose of the PREA is to "provide for the analysis of the incidence and effects of prison rape in Federal, State, and local institutions and to provide information, resources, recommendations, and funding to protect individuals from prison rape" (Prison Rape Elimination Act 2003). The PREA also provides funding opportunities for the governmental agencies that administer these

institutions to implement programs designed to carry out the law's goals. Additionally, the PREA includes a component whereby the incidence of sexual assault in confinement facilities is to be studied by the United States Bureau of the Census and by other means, in order to quantify the incidence of sexual assaults in detention centers nationally and evaluate what effect the program is having on the problem (Beck and Harrison 2006). Data have been collected annually from these studies, beginning with the year 2004 (Beck and Harrison 2008).

The PREA legislation created a legal and financial impetus for state and local governments and other entities that administer confinement facilities to take steps to eliminate the sexual abuse of their clients and to do so quickly and competently. The law provides that if states do not protect inmates from sexual abuse under the cruel and unusual punishment provision of the eighth amendment, then Congress can take action to enforce those protections pursuant to the fourteenth amendment. Further, the PREA declares that those states who fail to protect their inmates "are not entitled to the same level of federal benefits as other states" (Prison Rape Elimination Act 2003).

The advent of the PREA has created a substantial civil liability for jurisdictions who fail to heed the federal mandate to protect persons in their custody from sexual abuse (Jenness and Smyth 2006). Correctional administrators who know or should know about conditions which create a risk of sexual abuse inside their facilities but who fail to take appropriate steps to reduce or eliminate that risk are exposed to "vicarious liability" when inmate victims

subsequently take legal action (Layman, McCampbell and Moss 2000). Many prison inmates make it their business to know their legal rights, and are not afraid to sue when they think those rights have been violated.

Tom Cahill, an Air Force veteran who was gang raped in a Texas jail during the one day he was incarcerated for an act of civil disobedience in connection with a labor strike, estimated that the taxpayers have spent at least \$300,000 as a result of his non-service connected pension and the costs of his numerous subsequent hospitalizations (Walton et al. 2009). Mr. Cahill's expenses to the taxpayers pale in comparison to the \$15,000,000 award granted by a Michigan jury, along with an apology, to a former inmate who had been raped by a guard over the course of several years in a facility that the jury determined was known by both the warden and the head of the department of corrections to be a "sexually hostile prison environment." Ibid. The PREA legislation makes a "finding" that prison rape can be a violation of an inmate's Constitutional rights (Prison Rape elimination Act 2003), but stops there. This study suggests, based in part on cases like those of Mr. Cahill's and the former Michigan inmate cited above, that such legal action may come to be the most effective means at stopping rape in prison.

iii. PREA Findings

With the passage of the PREA in September 2003, the United States Congress established "findings" about realities of twenty-first century penology. These findings were made as a matter of law by language in the legislation that states, "Congress makes the following findings." Ibid. Congress appears to have

relied on the evidence submitted at and for that hearing in declaring those findings. Some of that evidence was based on statistical studies; however, much of it was qualitative or even anecdotal. Those findings, including one that holds that at least 13% of the nation's inmates have been sexually assaulted in prison, were largely based on the testimony of the correctional experts in front of the House Judiciary Subcommittee on Crime, Terrorism and Homeland Security on April 23, 2003. In some cases, such as the finding that "most prison staff are not adequately trained or prepared to prevent, report, or treat inmate sexual assaults," the findings were taken verbatim from the testimony of an expert witness (U.S. Congress 2003). The following are among the PREA findings (Prison Rape Elimination Act 2003).

- More than 2,000,000 Americans were locked up at the end of 2001. In 1999, there were more than 10,000,000 separate admissions to and discharges from prison and jails;
- There has been "insufficient" study of the incidence of rape of Americans in custody; however, "experts" have conservatively estimated that 13% or more of the prison population - more than 1,000,000 individuals in the last twenty years - may have been subjected to sexual assault while in confinement;
- Mentally ill and young first-time offenders face an increased risk of sexual victimization when they are incarcerated;
- Most prison staff are not adequately trained or prepared to prevent, report, or treat inmate sexual assaults;
- Prison rape often goes unreported and inmate victims often receive inadequate, if any, treatment, for the severe effects of prison rape;
- Prison rape exacerbates the already problematical issues associated with inmates with HIV and AIDS;
- Prison rape is a menace to the public, inasmuch as inmate perpetrators and victims are likely to pose an increased threat once released;

- The frequently interracial character of prison rape contributes to a deterioration of race relations inside and outside of prison walls;
- Prison rape is a cause of violence and a general threat to security within institutions;
- Prison rape impedes the ability of victimized inmates to reintegrate into society;
- The public at large and the government in general are unaware of the “epidemic” proportions of the problem;
- The prevalence of prison sexual assault constitutes a violation of the Constitutional rights of the victims.

iv. PREA Objectives

The PREA established nine broad objectives for the betterment of the nation’s correctional systems. These are:

- A zero tolerance policy regarding rape;
- Rape prevention as a high priority;
- National standards in measuring the problem and response;
- Improved information gathering;
- Standardized definition of terms;
- Increased accountability of correctional managers;
- Adherence to the eighth amendment (freedom from cruel and unusual punishment);
- Improvement of efforts by the government on a wide array of areas of public policy;
- Reduction of the financial burden that is part of prison rape. Ibid.

The PREA left its aims neither to chance nor to the good intentions of correctional administrators. It established and funds a comprehensive apparatus

to study prison rape to measure the effect, if any, that the PREA has on it, and to take steps to prevent, respond to, and eventually eliminate sexual assault in prisons. That structure includes surveys of prison, jail, and juvenile inmates, former inmates, and correctional administrators. The BJS is the agency responsible to conduct the mandated study. Characteristics of both victims and perpetrators are among the required objects of study, which is nationwide in scope and scientific in method. The PREA calls for a survey of correctional facilities at the local, state, and federal levels of government to determine the prevalence of a wide range of sexual assault and other sexual misconduct within the nation's confinement facilities (Beck, Harrison and Adams 2007).

v. PREA Review Panel

The PREA also created a Review Panel On Prison Rape, i.e., Review Panel, composed of appointees of the Attorney General and the Secretary of the Department of Health and Human Services, to work with the BJS. The Review Panel was charged with holding annual hearings aimed at examining the correctional facilities with the highest and lowest annual incidence of prison sexual assault. The PREA provided authority, including subpoena power, for the Review Panel to hear testimony from inmate victims of sexual assault and corrections officials. Following nine days of hearings in 2008 involving “thousands of pages of documents and seventy-nine expert witnesses,” including prison administrators from facilities with some of the highest and some of the lowest rates of reported sexual victimization, the Review Panel summarized its

findings on the issue of prison rape with 33 recommendations. The first recommendation established the tone for those that followed:

The management of the prison system (beginning with the Secretary of the Department of Corrections) must believe that sexual assault – both [inmate-on-inmate] and [staff-on-inmate] - can and will occur in their facilities unless they make prevention a high and unequivocal priority. Unless zero tolerance is clearly and repeatedly conveyed from the top down, the best PREA policy will be little more than a paper facade (McFarland and Ellis 2008).

vi. PREA Commission

In addition to the Review Panel, a nine-member National Prison Rape Reduction Commission, i.e., Commission, was created. This group, appointed by the President and leaders of Congress, was charged with the responsibility to “carry out a comprehensive legal and factual study of the penalogical, physical, mental, medical, social, and economic impacts of prison rape in the United States on (A) Federal, State, and local governments; and (B) communities and social institutions generally, including individuals, families, and businesses within such communities and social institutions” (Prison Rape Elimination Act 2003). Two of the authors cited in this study, Cindy Struckman-Johnson and Brenda V. Smith, were named as members of the Commission.

The Commission was mandated to examine 15 specific areas of study of prison sexual violence. The aim was to discover the causes, effects, and costs of prison rape; to identify which institutions and which strategies (related to topics ranging from methods of surveillance to prison design to inmate complaint reporting structures) succeed or fail at reducing or eliminating it; and to determine what further study is indicated in order to reach the goal of zero tolerance. The

PREA called for the Commission to file a report with the President and Congress on its activities, including recommendations to the Attorney General and the Secretary of Health and Human Services for national standards aimed at eliminating rape in prisons, jails, and juvenile detention centers – essentially every institutional setting that could be described as a correctional facility (U.S. Dept. of Justice 2011).

In June 2009, the Commission (by then known as the Prison Rape Elimination Commission) filed its report, which includes extensive recommendations for standards for the “prevention, detection, response, and monitoring” of sexual abuse in America’s confinement facilities. These proposed standards would establish benchmarks for correctional facilities to strive for zero tolerance of sexual abuse by adhering to principles related to areas of correctional management including, but not limited to, inmate supervision generally; cross-gender supervision; accommodating inmates with special needs; hiring and promotion decisions; monitoring technology; evidence protocol and forensic medical exams; and training and education for staff and inmates (Walton et al. 2009).

vii. Again, What is Rape?

Finally, and importantly, the PREA concluded with a series of definitions of terms. Among those, the word “rape” is defined as the sexual assault of a “person” (Prison Rape Elimination Act 2003).

CHAPTER III

FINDINGS

Quantitative Findings and Analysis

a) Uniform Crime Reports

The 2008 UCR documents reports by United States law enforcement agencies of 90,479 “forcible rapes” (FBI 2011). Based on a population of slightly more than 300,000,000 people, the UCR’s rate of sexual victimization of this country’s citizens for that year was 0.30 per thousand. Given the fact that the UCR defines forcible rape as a crime that is perpetrated only against women - slightly more than half of the population (U.S. Census Bureau census.gov/main/www/cen2000.html) - a more accurate rate of victimization would double the 0.30 rate to 0.60 per thousand (women).

b) National Incident-Based Reporting System

The 2008 New Hampshire NIBRS data for crimes that were characterized as forcible rape, forcible sodomy, sexual assault with an object, forcible fondling, incest, and statutory rape involved 1,562 victims, including 1,298 females and 264 males (N.H. State Police 2009). Thus, approximately 83% of the victims of these crimes were female, and about 17% were male. The United States Census for the year 2000 (the most recent census prior to the year 2008) established a

New Hampshire population of 1,315,809 (U.S. Census Bureau census.gov/main/www/cen2000.html). Based on that population, the New Hampshire NIBRS data for 2008 indicates that the sexual victimization rate for New Hampshire residents for the listed crimes was 1.19 per thousand.

The 1,562 victims in the New Hampshire NIBRS data set were victimized by 1,389 perpetrators, of which 1,282 were male, 95 were female, and 12 were recorded as offender sex unknown (N.H. State Police 2009). Therefore, approximately 92% of the perpetrators of these crimes were male, and about 8% were female.

c) National Crime Victimization Survey

The 2008 data from the NCVS of rape and sexual assault of persons over the age of twelve, including “verbal threats of rape and threats of sexual assault,” document reports by victims of 203,830 incidents. Of those victims, 164,240 (about 81%) were females, and 39,590 (about 19%) were males (U.S. Dept. of Justice OJP 2010). NCVS provided data on the gender of the perpetrator or perpetrators of those attacks in 195,430 of the 203,830 incidents. The gender of the perpetrators of those attacks which were single-offender victimizations was reported to be male 78.1% of the time, female 18.5% of the time, and unknown and unavailable for the remaining cases. The gender of the perpetrators of those attacks which were multiple-offender victimizations was reported to be all male 75.7% of the time, all female none of the time, and male and female 24.3% of the time. The NCVS data indicate more than twice the number of sexual crimes (using similar but not identical definitions of the crimes) as do the UCR data, but

since the potential victim base includes men, the NCVS polls a sample that represents slightly less than twice the population reported on in the UCR. The NCVS data report a rate of sexual victimization in the country of 0.80 per thousand persons, based on a population (of persons over the age of twelve) of approximately 252,000,000 (Rand 2009). This is less than the New Hampshire NIBRS sexual victimization rate of 1.19 per thousand for the NIBRS crimes, but higher than the 0.30 per thousand estimated by the UCR. However, since the NCVS excludes crimes against children under age twelve and the UCR and NIBRS do not, and the UCR excludes male rape victims, the victimization rates of the populations studied by the three programs may actually be closer than the statistics suggest.

d) Prison Rape Elimination Act

The 2008 PREA survey of prison and jail administrators involved places of confinement where 2,170,000 inmates resided. The survey accounted for 7,444 sexual exploitation allegations, or 3.43 allegations per 1,000 adult inmates. Of those allegations, 3,697 were of staff sexual misconduct or harassment. Of the 7,444 allegations, 931 (about 13%) were substantiated. Of those cases, 77% of the victims were male, and 23% were female; 82% of the perpetrators were male, and 18% were female. Of the 931 substantiated allegations, 424 were perpetrated by prison staff. Of the 424 substantiated allegations of staff sexual misconduct or harassment, an estimated 63% of the victims were male, and 37% were female; 44% of the perpetrators were male, and 56% were female (Guerino and Beck 2011).

The 2008 PREA survey of inmates in jails and prisons was administered to 81,566 inmates in 463 confinement facilities. Of the 76,459 inmates who completed the survey, 2,861 made allegations that they had been sexually abused in the facility within the past year (Beck et al. 2010). This represents a sexual victimization rate of 37.42 inmates per thousand, more than ten times the rate of sexual victimization reported by prison officials, and more than 100 times the rates reported by the three national studies of sexual crimes “on the street.”

e) Summary

These data suggest that sexual exploitation within prisons and jails occurs at a rate of from 3 to 100 times more often than do such incidents that take place in free society; that such exploitation on the street is most likely to be perpetrated by a male against a female victim; and that such abuse involving prison staff and inmates is most likely to be perpetrated by a female staff member against a male inmate (Please see Table: Rates of Sexual Abuse by Study Entity, in Appendix).

Qualitative Findings

"That was not part of my sentence, to...perform oral sex with the officers." With that simple statement, New York inmate Tanya Ross, during a 1998 interview on NBC Television's *Dateline* program, summarized the irony and injustice of the sexual exploitation of inmates by prison staff (Amnesty International 1999). Her story is not unique. In addition to media reports, studies and forums have also documented some of the human misery that remains after a prison sexual assault is over. A 1994 United States Supreme Court case, *Farmer v. Brennan*, established that prison administrators' "deliberate

indifference” to prisoner rape is unconstitutional (Stop Prisoner Rape and The National Prison Project of the American Civil Liberties Union 2005). Beyond the legal issues, a real human tragedy inevitably exists behind each statistic.

On June 14, 2005, in Washington D.C., the Commission held its first public hearing. There, Linda Bruntmyer told the Commission about the suicide of her teenage son after he was raped in prison. Portions of her testimony follow:

My name is Linda Bruntmyer and I'm here today to tell you about my son, Rodney. When Rodney was 16, him and his brother set the dumpsters on fire in the alley in our neighborhood. The authorities decided to make an example of Rodney...They sentenced him to eight years in prison...

At 16, Rodney was a small guy, only 5'2" and about 125 pounds. And as the first offense offender, we knew he might be targeted by older and tougher inmates. Rodney wrote us a letter telling us he had been raped. A medical examiner had confirmed the rape. A doctor found short tears in his rectum and ordered an HIV test, because he told us one third of the prisoners there was HIV positive...Rodney knew if he went back into the general population, he would be in danger. He wrote to the authorities requesting to be moved to a safer place. He went through all of the papers, but he was denied.

After the first rape, he was returned to the general population. There, he was repeatedly beaten and forced to perform oral sex and raped. He wrote for help again. In his grievance, he wrote a letter, I have been sexually and physically assaulted several times by several inmates. I'm afraid to go to sleep, to shower or just about anything else. I am afraid that when I am doing these things, I might die at any time. Please, sir, help me.

The officials told him that he did not meet what they call emergency criteria. We all tried to get him help to a safe place. I called the warden trying to figure out what was going on. They said Rodney needs to grow up. He says this happens every day, learn to deal with it. It's no big thing...

After he was finally put into segregation, we had about a ten-minute phone conversation. He was crying and he said, mama, I'm emotionally and mentally destroyed. That was the last time I heard his voice. My son...hung himself in his cell. He was 17 and afraid and

[ashamed] and helpless. He laid in a coma for...four months before he died.

Nine years have gone...but my family still suffers by what happened to him. My children are...not as they were before. One of my children will start crying for no reason at all. My...daughter has a don't mess with me attitude and walks around angry all the time. She was very close to Rodney and to this day we have to watch what we say about him to her. When we go to his grave yard, it is very hard for her to leave. Sometimes she tries to dig out the grave with her fingers.

When it first happened, I was very angry too at everyone. I still sometimes go to bed crying. I wake up crying, what could I have done different to prevent this from happening, but I learned to let myself sit back and focus.

I understand why Rodney did what he did...I tell people not to feel sorry for me. I learned to deal with it by using my anger to help prevent this from happening to others. I know that it is still happening. We know that what happened to Rodney could have been prevented. There are ways to protect vulnerable inmates, a way to respond to the needs of prisoners who are being sexually assaulted, even though many of the prisoners are still being sexually abused across the country every day. Rodney tried to ask for help and I tried too and nothing was done.

Rape in prison should not be tolerated. It destroys human dignity. It spreads disease and it makes people more angry and violent, it kills. It is too late to help my son, but there is help...for other prisoners in this situation. Rodney did not deserve to be beaten. He did not deserve to be raped. He did not deserve to die. Please make sure what happens to Rodney never happens again. Thank you (National Prison Rape Elimination Commission 2005a).

The first former inmate to testify before the Commission spoke of the sexual indignity he endured at the hands of a male correctional officer while a prisoner of the State of Texas. His testimony, in part, follows:

My name is Gary Cunningham... As a former prisoner of the Texas Department of Criminal Justice, I have...experience with the violence and abuse that takes place within America's prisons. In 2000 I was housed at the Luther unit in Navasota, Texas. While at the Luther unit I worked in the...laundry under the supervision of Corrections Officer Michael Chaney.

After just a few weeks of working with Officer Chaney, he began to touch me in a sexual manner during pat searches. At first I thought it was an accident, but since it continued every day, I soon realized his inappropriate touching was intentional. He also stared at me when I showered and made sexual comments. I was afraid to tell anyone ... but...I finally went to the unit psychologist and told him about the touching and crude comments. He advised me to stay away from Officer Chaney.

The prison psychologist's advice did nothing to prevent the sexual harassment...I decided go to the prison administration for help. I approached the assistant warden and his second in command officer and told them about Chaney's sexual comments and sexual touching during pat searches. They told me that I was exaggerating and that Chaney was just doing his job. I eventually confronted Chaney and told him to stop touching me. He only got angry and continued to harass me. I tried again to get help from prison administrators, but I was told to keep my mouth shut.

Officer Chaney eventually raped me in September of 2000. On that day I had just finished my job at the prison's laundry and began walking to the back of the room...Suddenly, Chaney shoved me, knocking me off balance. I screamed and struggled to get him off of me, but he was too big. Officer Chaney weighed about 300 pounds. I'm 5'6" tall and weigh about 145 pounds. While I struggled, Chaney handcuffed me. He then pulled down my boxers and forcefully penetrated me. When I screamed from the terrible pain, Chaney told me to shut up. I tried to get away, but I could barely move under his weight.

After it was over, I was dazed. He took me to the shower in handcuffs, turned on the water and put me under it. I was crying under the shower and I saw blood running down my legs. He left and came back with a liquid that stung when he poured it on my behind. When he took the handcuffs off me, he threatened me. He said if I ever reported him, he would have other officers write false assault cases against me and I would be forced to serve my entire sentence or be shifted to a tougher unit where I would be raped all the time by gang members. He also warned me not to say anything to the officials I had complained to before because they were his friends and they would always help him out.

At first I didn't dare tell anyone about the rape, but in October 2000, I was so afraid of being raped again that I told the unit psychologist that Chaney had raped me. He moved me to another job...A few days later I was given a new position in the laundry right next door to where

Chaney worked. I continued to see him regularly and he continued to touch me inappropriately.

I wrote the Internal Affairs department two times about Chaney's touching. They never addressed my concerns and failed to take precautions to protect me. I was too scared to file a written complaint against Chaney because I feared retaliation from prison officials. Instead, I requested a private meeting with an Internal Affairs investigator. I received no response to my request and Chaney was never punished for assaulting me.

Officer Chaney went on to sexually harass and assault other prisoners. One year later Nathan Estery...began working under Chaney's supervision in the same laundry where I had been previously assigned. On several occasions Nathan was forced to perform sexual acts on Chaney. Fortunately for Nathan, he was able to collect Chaney's semen during two of the attacks and [DNA] testing positively linked the sample to Chaney.

Chaney finally resigned...when he was indicted for his crimes against Nathan...He pleaded guilty to sexual contact with an incarcerated person. He will serve no time in prison.

For me, there is no justice. While I was in prison fear of retaliation by staff or other prisoners haunted me and prevented me from reporting the rape right away. My fear led me to attempt suicide just to escape the pain of my situation, because my previous complaints to prison officials resulted in sharp rebukes and the prison psychologist's assistance was limited. I felt hopeless. I believe that openly pursuing my charges against Chaney would have led to retaliation from staff. They could write disciplinary cases to keep me in prison for years beyond my expected release date. They could ship me to...rougher units where I would be guaranteed to face additional abuse.

Now I feel like as a man it has taken away a lot from me, a lot. I try not to think about it, but I constantly do. When I see a guy at work that looks like him, I began to have images of what happened to me. I feel angry that he was not truly held accountable for his actions even after all of the evidence against him came out.

Many men and women in Texas experience sexual abuse at the hands of officers and other prisoners, but their pleas for help go unanswered by administrators and staff. It seems that officials...protect the prisoner...only when the victim has physical evidence such as a semen sample. Individuals without this kind of proof are left to fend for themselves.

Prisoners who file a complaint encounter a complicated grievance system that few prisoners can navigate, but you are shut out of court forever if you cannot figure out how to get your grievance properly filed within a few days of the rape. Furthermore, victims of rape are usually too upset to figure out what they have to do to file a lawsuit. They're not thinking about lawsuits. They're thinking about how to get protection since prison officials do not want to listen to them. These factors result in very low rates of reporting among prisoners which lead to the inaccurate perception among prison administrators that there is very little rape in prison. The reality is that rape is widespread and prison rape victims feel hopeless because of officials' failure to prevent additional attacks despite their complaints.

Now that I'm out of prison, I have not forgotten people still behind bars. I speak out about my experience at the [Luther Unit] whenever I have the opportunity, and I have my organization, Pen Friends and Services, to help the prisoners...The people I correspond with are always so grateful for the assistance.

My hope is that this commission will hear the pleas for protection [from] the abuse in America's prisons and expose the widespread nature of violence. Your scrutiny, along with the attention of the media, is crucial to exposing the violence behind bars in preventing prisoner abuse. I thank you for your time. Ibid.

Not all correctional officers who rape inmates get off as easily as Officer Chaney reportedly did in Texas. Sandra Matheson, the head of the New Hampshire Attorney General's Office of Victim Assistance, testified to the Commission in December 2007 about a New Hampshire State Prison correctional officer who fared considerably worse when his case got to court than did Officer Chaney. Sergeant Douglas Tower was charged with assaulting not one, but twelve inmates – all women. Portions of Director Matheson's testimony follow:

My name is Sandra Matheson and I am the Director of the State Office of Victim/Witness Assistance at the New Hampshire Attorney General's Office...

I was asked to come and talk to you about one particular New Hampshire case, involving a correctional officer and numerous female inmates in a community corrections facility, and the impact that this case has had on so many lives... There have been 11 civil suits filed against the state, involving 30 plaintiffs...

This case involves Douglas Tower, a NH correctional officer who was assigned as the night supervisor at the Shea Farm Halfway House in Concord, NH, a minimum-security facility that houses approximately 45 female inmates after they leave the State Prison to transition back into the community. Shea Farm looks like a large white farmhouse. It sits on a quiet country back road. The women live in comfortable rooms and depending upon their classification, have the ability to work in the community, go out on weekend leaves and have visits with their children and other family members. This is in sharp contrast to the NH State Prison for Women, which is overcrowded, is surrounded by fences and barbwire, and has very limited programming.

Sgt. Douglas Tower... age 60, had been a corrections officer for 14 years and had previously been assigned to the NH State Prison for Women. In 2002, a female correctional officer had accused him of sexual harassment, and as a result Tower had been transferred to Shea Farm, which at the time, was a male facility. That case resulted in a settlement between the officer and the State.

When Shea Farm became a female facility, Tower remained in charge, working primarily the 3:00 to 11:00 shift and sometimes the midnight shift. He was often the only officer on duty. Tower was in charge of supervising and disciplining the approximately 45 female inmates. He had the authority to lower their security classification, approve or limit overnight leave requests, telephone privileges, and/or visits with family members, and essentially, he had the ability to write the women up for disciplinary infractions and "send them back behind bars." In other words, he had ultimate authority and control over the women in the facility.

In June of 2005, one woman came forward to disclose abuse by Tower, and on April 26, 2006, after a lengthy State Police investigation, Tower was indicted on 54 charges, involving 12 different female inmates. The charges included 14 felony counts of aggravated felonious sexual assault, 4 felony counts of felonious sexual assault, 19 counts of simple assault with an extended term of 2½ to 5 years in prison, and 16 counts of misdemeanor sexual assault. The alleged acts included vaginal, oral and anal penetration; other forms of sexual contact and physical assaults including punching, choking and grabbing.

All of the charges alleged that Tower committed some form of sexual or physical assault against female inmates while he was acting as a corrections officer supervising them. The charges of aggravated felonious sexual assault and felonious sexual assault allege that Tower engaged in sexual penetration or sexual contact with the victims through coercion by using his position of authority over them as a corrections officer, or that he engaged in the conduct without the victim's consent. The charges of sexual assault allege that Tower engaged in sexual contact with the victims while in a position of authority over them as a corrections officer. The charges of simple assault, extended term, allege that Tower had unprivileged physical contact with the victims while acting as an on-duty law enforcement officer...

The twelve women named in the indictments ranged in age from 21 to 41. They were serving time for charges ranging from armed robbery to get money for drugs, drug possession, prostitution, forgery and theft. Many of the women had long histories of drug or alcohol abuse, some had mental health issues, and almost all of them reported they had previously been victims of battering, sexual abuse/sexual assault or [other] violent crimes.

One young woman had recently been sexually assaulted while out working in the community. The suspect had been arrested and was... awaiting trial on felony sexual assault charges... He had been released on bail and was living in Concord. The woman had told correctional staff that she was afraid to run into him, and as a result Tower was assigned to drive her to and from her job every day. It was during these trips that he allegedly assaulted her.

As the women began to come forward, we began to see a pattern of coercion and threats. Tower would sign a woman's leave slip and tell her "she owed him one." He would write someone up with a D-report and then tear it up telling her that if "she did him a favor" she could see her boyfriend, who was not on the approved visitors list.

One woman told about walking in on Tower and another inmate. Tower then began treating her "very poorly" giving her disciplinary reports. She told him that she wouldn't say anything and that she wanted him to leave her alone. Shortly after, while passing her on the stairwell... Tower allegedly grabbed her by [the] throat and pinched a pressure point. He told her "if she kept messing [with] him, she'd go down." She was then sent back to prison.

One woman reported that she could not use the house phone to call her father... Tower let her use his office phone. He then told her "she owed him a favor" and tried to hug her. She worked as a

chambermaid, and Tower showed up at her workplace and “had sex” with her in one of the rooms. He told her not to tell anyone about their “relationship.”

One woman reported that when she refused his second request for oral sex, he revoked her visiting privileges and would not let her call her son. She was sent back to prison and when she returned two months later, he told her he was “glad she was back” as she always put a smile on his face. Soon afterward, he revoked her phone privileges. On her son’s birthday, he offered her his office phone so she could call him, and when she got to his office, he forced her to perform fellatio on him. The next month she was again sent back to prison.

One woman reported that she began using heroin a couple of weeks after she arrived and Tower found out. He called her into his office and told her that he knew what she was doing and that she could do a drug test or “go another route.” She told him she didn’t want to go back to prison and would do anything. He made her perform fellatio on him.

Tower told the women that nobody would believe them and that he was a good friend of the Director of Community Corrections, whose office was at Shea Farm and who all the women knew. He even had a picture over his desk of the Director giving him an award. He told them if they came forward they would be sent back to prison.

Tower even told one woman that he had had an incident with another corrections officer who accused him of acting inappropriately, and that the investigators did not believe this other officer. She reported that he told her “that if they did not believe another officer, they were not going to believe an inmate.”

The first trial involving the youngest of the women, a 21-year-old, began in January 2007. After 10 days of testimony, with the victim testifying for almost a full day, Tower was found guilty of two counts of aggravated felonious sexual assault and four counts of felonious sexual assault... Tower was sentenced to 20 to 40 years at the NH State Prison for Men. He will not be eligible for parole until he has served his minimum sentence of 20 years.

Since this case began just about every one of the women, at some point, has violated their parole and ended up back behind bars. Several of them relapsed and went back to using drugs. One woman attempted suicide and almost died.

The case not only impacted the women involved, but the other inmates at Shea Farm, as well as the other DOC staff. When the case first broke, the Director of Community Corrections and I set up a “debriefing” meeting with all of the women at Shea Farm, giving them what facts we could share with them at the time, and offering them support and services if needed. We brought in the local Rape Crisis Center and mental health practitioners from DOC and left them with confidential contact information.

One of the first issues to arise was the fact that due to their lack of trust, the women did not want anything to do with DOC mental health services. They wanted to see a therapist within the community. I worked with them to file a claim with the State’s Victim Compensation Program to pay for counseling. Because of an existing rule that prohibited inmates from receiving compensation, their claims were denied. This rule has since been changed. The Attorney General... made the decision that these women deserved to have mental health services and made arrangements for the cost to be paid for out of other available funds.

The state is insisting that any plea negotiations in this case include Tower taking responsibility for the charges involving every single victim, which at this time he is refusing to do...

The NHDOC has made many changes as a result of this case. It is hard to measure the emotional cost of this case, to the victims, to the other NHDOC staff and to the public’s trust in the system. The financial cost to the state is yet to be determined (National Prison Rape Elimination Commission 2007b).

The matter of Douglas Tower may be one of those cases where the gender of the victims (female) and the gender of the perpetrator (male) adversely affected the sentencing outcome (from the perpetrator’s point of view) as suggested by Curry, Lee, and Rodriguez (2004).

At the second Commission hearing, in August 2005 in San Francisco, more victims of prison rape testified, including a man who had been sexually assaulted thirty-two years earlier when he was a teenager, after he was arrested at a high school party and brought to jail. The witness testified that the experience changed his life forever. A partial transcript of his testimony follows:

My name is Chance Martin, and I was raped in a county jail in 1973 in Indiana when I was still a high school student. I was 18 and attending a party...A guy at the party...dropped a chunk of hash...and the police came and took everybody...away.

They put me in a cell, a big cage, really, with about 40 guys...I was scared out of my mind. I was a little guy back then, and I had long hair. I was kind of pretty. I was assaulted within 24 hours. I must have looked as scared and dejected as I felt, because this guy came up and sat on the bunk next to me and said, "Let's cheer you up and play some cards." I couldn't even figure out what they were playing. I thought we were playing poker, but then they said, "Okay. You lost. Pay up." That's when one of these guys told me they were going to fuck me. I said, "Oh, no, you're not." And they said, "You see that other guy over there?" And this guy's face -- I swear to God, I've never seen anybody's face that badly beaten. He looked like he had gone through the windshield of a car. They said, "Do you want that to happen to you?"...

They started jamming me with a broomstick, and they just kept beating me. They knocked the wind out of me, and I curled up in a ball on the floor. They dragged me to a bunk, and this guy said, "Now you have to give me head." I didn't know what he meant. I had never heard the term "head" before. One of them started sodomizing me, and it hurt so bad that later on with two of the other guys I was given a choice, and I chose to go down on them rather than get sodomized because the anal sex hurt so much...

I was so mad at myself because I didn't feel like I had put up a good fight. I really wished that they would have beaten me as bad as that other guy...It was humiliating. I knew a lot about embarrassment, but this was the first time that I was humiliated. My mother picked me up from jail. And when I told her what happened to me, she said I deserved it...

It would have been so easy to protect vulnerable people in that jail, but they didn't even try. They had guys who were charged with attempted murder and assault with a deadly weapon thrown in with drunk drivers. There was no supervision in that jail. There was no guard who had a line of sight into the cell. The guards' office was pretty far away, and the TV was on all the time. This was zero supervision. The only time I saw a guard the whole time was when they were bringing a prisoner in or taking a prisoner out or when they inspected the cell in the morning to see that the trustees had swept and mopped.

What happened to me in that cell has affected my life in so many ways. I think it permanently damaged my self-confidence. I had a

girlfriend when I was arrested, but I've never really been able to have a functional relationship since then. Because of what happened to me in that cell, I've questioned my sexuality. There was a time...when I really wanted to be gay because it would resolve so much conflict. I never questioned my sexuality before I went to jail. I've been diagnosed with mental illness and hospitalized more times that I can count. I've abused drugs and alcohol and tried to kill myself on the installment plan. I couldn't successfully commit suicide; although, I wanted to worse than anything in the world...

Being raped in that cell and being diagnosed with mental illness were the two pivotal events in my life. I'm overcoming it now, but the rape took 20 years away from my life. What happened to me was barbaric (National Prison Rape Elimination Commission 2005b).

A third former inmate/witness, who, like Chance Martin and the late Rodney Bruntmyer, was a teenager at the time he was sexually assaulted, also testified at the August 2005 public hearing. Portions of a transcript of his testimony follow:

My name is T.J. Parsell, and I was a skinny 17-year-old with a face dotted with pimples. It was a stupid prank that sent me [to prison]. I had robbed a Fotomat with a toy gun.

So while my friends prepared for [the] high school prom, I was being gang raped in an adult prison. Young men especially are targeted when they first arrive, and I didn't last 24 hours before an inmate spiked my drink with Thorazine and then ordered me down to his dorm. Even with the drug's heavy effect, it was the most agony I had ever experienced.

They knocked me out of the bed and nearly suffocated me as they shoved my head into a pillow to muffle my screams. I was powerless under their weight as they ripped my pants off. One of them grabbed my hair and smacked me and pulled my head down while the others took turns sodomizing me. When I choked on my own vomit and gasped for air, it only made them laugh. They were unmoved by my crying. It felt like a battering ram being shoved up inside of me, splitting and cracking me open. The crushing weight of that pain has never left me...

My rectum bled for several days, but I was too afraid to come forward, even to see a doctor. I was terrified I'd have to explain what had happened. I just wanted to do my time and get out alive.

Everyone knew that snitches were killed. What they took from me went beyond sex. They had stolen my manhood, my identity, and part

of my soul. They laughed about it afterwards and openly bragged while one of them flipped a coin to see who got to keep me. The inmate who won was nearly twice my age. He was serving time for aggravated assault. He wasn't one of those who raped me, but I found out later that he had set it up to make me more vulnerable. It's one of the oldest games in prison to help bring you into their fold. So I was forced into protective pairing. It takes only one or two violent rapes before you start compromising. I wanted to shower and wash away what had happened. I hoped no one would find out about it, but as I walked the yard in a daze, other inmates pointed and laughed.

The shame and humiliation I felt accompanied the classic symptoms of rape trauma syndrome. I blamed myself. I couldn't stop replaying the scenario in my head and weighing what I could have done differently to avoid it. I had trouble sleeping at night...I alternated between violent tendencies and suicidal thoughts. The guards knew what had happened. The prison doctors knew as well. When I saw the proctologist for my bleeding, I raised concern about the size of his rectal scope, and his reply was, "Well, it's not any larger than what's been going up there."

Most people find the notion of prison rape unsurprising. It's unsurprising because it happens frequently and lies as a constant possibility. I blame prison officials for my rape as much as I blame the men who assaulted me. They created and shaped the environment, both actively and through their negligence, in which I was gagged, effectively silenced, and unable to resist. Ultimately, the attitudes and prejudices of corrections officials contribute to an atmosphere that fosters rape behavior.

Once an inmate has been raped, he's considered turned out, as if having been turned gay regardless of his sexual identity before entering the system. Once an inmate has been turned out, he's considered a target wherever he goes. Gay men especially are victimized...My experience as a gay man was that gay men would most definitely be victimized unless they chose someone to protect them...

Prison rape is often perpetrated by males who self-identify as heterosexuals. In the all-male world of prisons, the restraints of the heterosexual world no longer apply, where in the absence of female objects, men are compelled to use each other as substitutes. But this activity must coincide with the notions of manhood between the prison code, where a rigid distinction exists between active and passive roles and gender identity is allocated according to those roles.

To distance themselves from the notion of having gay sex, men will often force-feminize their victims. I routinely witnessed gay men who

were forced into adopting a female identity, assigned a woman's name, ordered to wear makeup made from pool chalk and underwear dyed red. They were made to wear their uniforms like halter tops and beaten for not talking in a high-pitched voice. Even the guards sometimes referred to them as "ladies" and "girls." And as a gay man, I blamed myself for many years. You're degraded so much in there that after a while you start to believe it...

Sexual violence in prison exists not only in direct victimization, but in the daily knowledge that it's happening. It approaches legitimacy in the sense that it's tolerated. Those who perpetrate these acts of violence often receive little or no punishment. To that extent alone, corrections officials and prosecutorial authorities render these acts acceptable. At the same time, we can't expect a rape victim to report it if he anticipates a lack of responsiveness, a lack of sensitivity or basic protection by those who are charged with his care. Ibid.

The authors of the California prison system study which finds that transgender inmates are an especially vulnerable part of the prison population offer the following from one such victim, given during one of the face-to-face interviews their team conducted:

I was in a relationship with another inmate. I'm involved with [him] for two weeks and another inmate spoke to me. [He] got angry and slapped me. I said, "I'm not going to go through this." So he got up and stopped me from leaving. I knew if I tried to leave it would be worse...

Another inmate gave me a compliment in the day room. [He] called me into the bathroom to talk. I saw this look on his face. He was angry. He spun me around and knocked my tooth out. Another inmate saw this and told the police. An officer saw this. I showed him my tooth. He said, "You'll be alright." One week later, and I'm still terrified. So I just want to make it work out...

He started forcing himself on me. He raped me. [The interviewer asked if it was anal penetration and the inmate said, "Yes."] This goes on for a year. Every day he's raping me in the shower. I was seeing a counselor, but I don't tell her. I was too afraid. I told her I was just getting beat up (Jenness et al. 2007).

Although an inmate witness came forward in the above case, inmates who are sexually assaulted by their peers cannot generally count on other inmates who happen to witness the assault for help, since such behavior (“snitching”) is contrary to the prison norm of “minding your own business” (McGuire 2006).

Mayra Soto, another transgender former inmate, testified at a Commission hearing in December 2006 that focused on sexual violence in immigration detention facilities. The testimony reflects another example of a public official who received a relatively light sentence upon being convicted of committing rape while on duty. Portions of that testimony follow:

I was arrested by Santa Ana police and taken to the San Pedro Service Processing Center... Because of my gender identity, I was placed in an administrative segregation cell with 10 to 12 other transgender women. The cell was overcrowded, and we were denied the basic rights that other non-transgender detainees exercised. We were locked up for 23 hours a day and spent much of the time shackled and humiliated.

As I sat in the cell, I couldn't help but feel that we were being punished simply for being transgender. Despite all of this, I was relieved to be locked in a cell with other people like me. Having been raped previously, I had tremendous fear that I would be beaten and sexually violated if I were placed in a cell with men...

A few days after being transferred to the San Pedro detention center, I was taken to see my lawyer. Because she was with another client at the time, I was placed in a locked holding cell. While I waited in the cell which was directly adjacent to the interview room, an immigration officer... came in with his pants unzipped and told me that I was going to suck him off. He checked the hall to make sure that there was no one around. He... then he reentered the cell and forced me to perform oral sex. I did it once. Then he left, only to return ten minutes later, telling me that I suck really good and that I was going to do it again. He spoke in such a threatening tone that I complied with his demands because I feared that he would hurt me.

He had ejaculated in my mouth, on my red detention uniform, and on the floor. I got a paper towel and spit the semen into it, realizing that it could be used as evidence of the crime. I was also able to collect the semen from my uniform and the floor.

Once I was finally taken into the interview to see my lawyer, I immediately told her what had...happened. She was obviously shocked and did not want to leave me alone, so she sent her interpreter to flag down a supervising officer. As I was telling her about the assault, I was becoming more fearful because I noticed that the officer who had assaulted me was looking at me through the cell door window.

Eventually two supervising officers came into the interview room to meet with me about the incident. They asked me to take off my prison clothes and that I hand over all evidence.

To this day the thought of what that immigration officer did to me makes me nauseous and fills me with fear, disgust, and anger. It is difficult to comprehend how a federal employee who was supposed to maintain a secure environment for me while I was detained could abuse his authority in such a flagrant and appalling manner.

I also feel that while the immigration facility took appropriate steps to ensure that transgender women would not be sexually abused by housing us together, they did nothing to make sure we'd be safe in other places in the facility. I desperately wanted to get rid of the taste of the officer's semen, but the investigators would not allow me to wash my mouth until the rape kit had been performed. The assault happened around 2:00 p.m., and I was not taken to the hospital for the exam until early the next morning. The memory of the taste in my mouth is extremely upsetting and I have flashbacks of it all the time. I recommend, therefore, that evidence be gathered as quickly as possible so that the victim can clean up and wash away such immediate and traumatizing reminders of the assault...

I had never seen the officer who assaulted me before, and I never saw him again. It was rumored that when he found out about my report, he left and never returned to work. At this point the only thing I wanted was to begin my healing process and begin to get over what he did to me.

Soon after I made my initial report, the Federal Bureau of Investigations became involved. When they came to interview me, I gave a description of the offending officer, including an explicit description of his penis. They were the ones who advised me that I could press charges against this officer. Although I wanted to move on with my life, the urge for justice was strong, and I decided to move

ahead with the criminal case. Had I known that this decision would later cause me tremendous distress, however, I might have reconsidered.

After the assault I was returned to the cell with the other transgender women. I immediately began to notice an air of hostility from the immigration officers in the unit. They treated me as if I was a liar and blamed me for the dismissal of their co-worker. And because it would not have been appropriate to discuss the case with the other detainees, I felt very lonely.

I repeatedly asked to see a counselor because I needed to vent what I was feeling. I literally felt like I was going to explode. The officers continuously ignored or humiliated me and looked upon me with what I felt was pure hatred.

Meanwhile, the memory of the assault was killing me inside. I lost my appetite and could hardly stomach any food. I quit sleeping altogether and slipped further and further into depression. Finally, when I threatened to commit suicide, one of the other transgender detainees in the cell pleaded with an officer and convinced him that I desperately needed help.

Due to the negative attitude the officials at the facility had taken towards me, my biggest fear at this point was that my application for asylum would be denied and I would be deported back to Mexico. I felt a constant pressure to retract my complaint against the officer, but I really did not want to give in. I wanted to remain strong and show that I was not going to let myself be taken advantage of...

My situation became increasingly hopeless. The hostility I felt from many of the officers grew...I decided to withdraw my application for asylum altogether. I felt it would be better to be sent back to Mexico than to stay in the destructive environment in that facility. After I withdrew the application, I remained at the facility for one more month...

The FBI had me released so that I could testify against the officer who assaulted me. However, I was never given a chance to testify...An FBI agent came to my home and informed me that the officer had pled guilty and was given six months jail time plus three years of probation. I was extremely angered by the news because six months jail time is completely inadequate penalty for the crime of rape, especially under these circumstances.

Since the FBI no longer needed me for their case, I was deported...I spent a couple of months in Mexico, but a friend collected enough money to bring me back to the United States...I was again detained at

the San Pedro facility, and the trauma of my first visit began all over again... This time I was not placed in a cell with other transgender women. Instead, I was classified as a Level 4 offender and placed in a unit with the most violent convicts. I was definitely not violent and had not been arrested for a violent offense. So I took this as another form of retaliation.

I still do not understand how the facility could justify placing someone as feminine as me in the same unit as murderers and rapists. There was no reason to classify me this way. And even if the facility had reason to consider me a Level 4 risk, I should never have been housed with violent and potentially predatory men. I was not given the option to be placed in a cell by myself or in protective custody... I repeatedly requested a transfer, but each request was denied. The men at the unit were constantly sexually harassing me...

A riot broke out... In the middle of all the fighting I was seriously injured, and only then did the facility take any action. By then I was devastated and humiliated. I was placed in protective custody, which at this facility basically meant solitary confinement. I spent my days in a small cell with no water, magazines, or programming. I was rarely taken to the yard for recreation, and my pleas for water and something to read or occupy my time with usually went ignored. The officer who guarded the units would pretend not to hear me.

This is cruel treatment that I don't think anyone should have to experience, especially not someone who has already been victimized repeatedly. Protective custody should not be the same as solitary confinement, and prisoners who need protection should not be treated the same as those who need to be punished...

Today I... am still struggling to let go of the horrible experience I had... Every day I work on healing the wounds of my past, and I want to... again express my gratitude to you. Speaking out against sexual assault [in] detention and sharing a bit of my experience with you will surely help my progress. I wish you luck in your work, and I hope that other detainees don't have to deal with the things that I went through. Thank you (National Prison Rape Elimination Commission 2006).

The sexual exploitation of inmates by other inmates is not confined to male or transgender prisoners being raped by male convicts. Velmarine Oliphant Szabo, a female inmate, wrote a series of letters to a University of Missouri researcher about her experiences in a county jail. Excerpts from one of those

letters, about an experience she endured at the hands of other females with whom she was locked up, follows:

The jail was extremely overcrowded. There were three women crammed into cells designed to house one or two women. I was sharing a cell with...“Valerie” and “Anna.” Valerie was more feminine and Anna, her lover, was more masculine. Nonetheless, Anna had made it clear on several occasions that she was attracted to me. I decided to give a little attention to “Sherylynn” a woman in the cell next to ours who had been subtly flirting for quite a while...In spite of Anna’s quiet protest, I moved into Sherylynn’s cell that same night just before our doors were racked.

After one fantastic night with Sherylynn, I made out my commissary list using most of my allocated order spaces on her. What I had not counted on was Sherylynn being one of the women that has been in such abusive relationships with men that they can’t accept someone loving and being kind to them...Sherylynn had to have mates fighting over her to make herself feel worth something. Once Sherylynn had the commissary I’d purchased for her, she...pitted Anna against me and threw me out [of her cell]. Sherylynn wasn’t getting [the reaction] that she wanted from Anna, so she began playing back up to me ... [Anna] let me move back into the cell with her and Valerie. The next week, when I couldn’t make store, Anna would spend on me like I was accustomed to doing for others.

One night after Anna latched on to my hand in her sleep, I found myself allowing Sherylynn to join me in the shower. Anna was so infuriated that she called fifteen to twenty women in the tank to observe Sherylynn and I, while Anna threw my belongings out of my cell...

Three days later...a stocky black woman named Joniqua...grabbed me from behind. When I began to struggle, Sherylynn and one other woman grabbed my arms. Anna was directing them to “Bring her into my cell, c’mon hurry, bring her in here!” I felt the weight of three more women pushing me into the cell. Joniqua got my panties off and threw them into the dayroom...I was stripped of my bra and county dress...While four women were holding me down, Anna ordered one grotesque female to sit on my face and to force me to perform an act of cunnilingus. When I refused to cooperate, and threatened to bite her if she tried, they moved me to a smaller cell.

As I struggled on the floor...I felt fists pummeling my legs and thighs. When I relaxed under the blows, Anna straddled my face while begging me to “just stick your tongue out a little bit.” If I would have complied with Anna’s pleas, (I found out later that) Sherylynn and

Joniqua would have forced as many women to try to have me in the same manner. To add to my humiliation, Anna had secreted vaginal fluids all over my nose and mouth, which seemed to appeal to the animalistic frenzy these women had worked themselves into...

When my grievance about the rape incident was completely ignored [by staff], I began to be asked to [be] racked in my cell all day except for meals and showers to keep Anna, Sherylynn, and Joniqua from fondling me whenever they felt the safe urge. Every time I'd come out for a shower, I'd get fondled or dragged out naked to the dayroom.

After about two weeks of this living hell, a nurse came to my rescue. I was in the shower, and Sherylynn and Joniqua were fondling my nipples, when the nurse wheeled in the medicine cart. I suddenly got brave and shouted, "Get your hands off my tits!" Sherylynn and Joniqua didn't see the nurse, and began to assault me. The nurse...ran straight to a Deputy and said "There's an inmate about to be raped in there!" I was moved out of the tank [the same day].

When I got transferred to prison [from the County Jail] Sherylynn was there and laughingly told me how she and Joniqua charmed the deputies at the disciplinary hearing and only received 10 days loss of privileges (no commissary or visits), with no segregation or loss of good time. Anna's excuse later given to me [for the rape] was: "None of this would have ever happened if you hadn't been bragging about how good you were" (Alarid 2000).

Prisons and jails are not the only places of confinement that have witnessed sexual abuse of prisoners. One witness testified to a Commission hearing in Austin, Texas about the indignities she suffered in a Philadelphia police station.

Portions of her testimony follow:

My name is Erica Hejnar...Thank you for allowing me to share my story with you...

It is extremely difficult to recount the experience... with the sexual abuse I had at the...Philadelphia...Police Department, in 2003. But I hope that what I share with you will motivate the Commission to do everything in its power to ensure that others are not subjected to similar situations of sexual violence while in detention...

I went out with a friend to the store to pick up diapers for my daughter, and as we were walking back to the shelter where we were staying,

we got caught in the midst of a police drug raid. My friend and I were surrounded by a group of police officers who threw us against the wall and immediately began verbally assaulting us.

A female officer was called to search us for drugs...After they found no contraband, they took me and my friend and they said they were going to take us to the police station for another thorough search. And I pleaded with the officers and repeatedly told them that we had not purchased any drugs...But we were still handcuffed and thrown into the back of...the police car and taken to 26th Police District...

When we arrived at the station, a second female police officer...took us into the room and searched us again. During the search the officer patted our underwear, felt under our breasts, and made us squat and cough. The search was extremely invasive and left me feeling frightened and uncomfortable...

After this second search, the officer placed us into the cell and locked it behind her. And as she left the outer room, it struck me how strange it was that the police never asked for our names, identification, or... anything...they didn't check fingerprints and they didn't allow us to contact anybody, so nobody even knew where we were and what had happened. Although we had been searched, we were not formally processed or told why we were being held...

When the female officer left, a male officer entered the room and sat on the bench outside of my cell...When he walked in, he was wearing his police officer pants, you know, the uniform, but he had a white T-shirt on and he didn't have his badge or any identification on...

And after sitting on the bench, he started talking to me and my friend and asking us questions...It felt as if he was acting inappropriately and that his questioning had nothing to do with the perceived crime...The officer...asked my friend and I if we were girlfriends...I don't feel very comfortable saying this, but he had said, if we wouldn't like to eat each other's pussies. I was shocked and I could not believe that this was really happening, because our cell was inside a larger closed room and there was no other officers in sight that we could call out to or could hear us. Trying to keep...the situation from escalating, I responded that we were just friends and that we never had sex with each other. I prayed that he would stop asking us these questions, but he continued to look at us and our bodies in a very suggestive manner. I felt as though his eyes were piercing right through our clothes.

The officer propped up his feet and continued tormenting us. He asked us again if we were girlfriends and demanding that we kiss

each other. As he told us, he jangled his keys in front of us, mocking us, and reinforcing the fact that he had all the power in the situation...

My friend and I kissed. Unfortunately, the officer would not stop. He told us that...he wanted to see us touch each other's breasts. My friend put her hand on my breast in compliance. Then the officer proceeded to ask her again if she liked eating my pussy. I was so horrified that I started crying uncontrollably.

I demanded to know why he was doing this, but he continued to insist that we touch each other, and if we wanted to go home that we would do what he said. He threatened us that if we said anything or made any noise, he would find something to charge us with so that we couldn't leave. He then told us to lick each other's pussies. I got so upset that I told him we were definitely not going to do that. But he pressed on, telling us that no one would see us and that he would not let us go until we did as he said.

My friend and I were both sobbing and started yelling in hopes that someone would hear us and help us. We wanted to be let out of the cell and get away from this monster as soon as possible. We were distraught, angry, frightened, and crying hysterically...

When he said that he would find something to charge us with if we didn't comply with all his demands, I believed him. It was without question the most humiliating and degrading moment of my life, and I could not believe that this so-called officer of the law had the power to violate us in this way. I was beginning to feel like this officer would be able to get away with absolutely anything he chose to do.

While this was happening, I noticed that another...male police officer had come back and he stuck his head into the cell, and me and my friend were praying that he would, you know, see what was going on and stop it, but he just gave the police officer a thumbs up and a smile and walked out of the room. My friend and I both began to fall apart at this point. Perhaps because we were so visibly upset and the fear that somebody else might actually hear us, the officer finally decided to let us go. He ordered us to fix our clothes, wipe our faces, and get the hell out.

When we went out into the main area of the station where the other officers were, we were still so upset that it's hard to believe that none of them pulled us aside and asked what was going on or tried to find out what happened back in the cell. I wanted to scream out so that everybody in the building would know, but I was so afraid that if we said anything, we would be thrown right back in jail.

While our release was being processed, I asked for a document stating that we had been held at the station, because the shelter I was staying at had a curfew and if I didn't show them proof, they would have thrown us out in the street. And after hearing our request, the officer who had violated, when he said that he would find something to charge us with if we didn't comply with all of the demands, he wouldn't give us any proof that we were there. He wouldn't even acknowledge that we were there, and he told us to get the hell out of there before he...locked us back up. And after what had happened, if we made a scene with our property being gone...he would put us back into the cell...

I got back to the shelter and they did encourage me to call 911. And I told the emergency operator exactly what happened and within minutes, a police car came...The police officer picked me up so I could give a formal statement. I was taken to a different police station and questioned by the captain in private. I gave...my report and he faxed the written statement to the Office of Internal Affairs that same night...

I have never been arrested and would never [have] believed that something like this could have happened. I felt like the officer had to be held accountable and the public needed to know what some law enforcement officials were capable of. I was relieved that the captain who interviewed me seemed to take my report seriously and I assumed that he would make sure the officer who had did these horrible things to us would be prosecuted. And, unfortunately, months went by and nothing happened.

It seemed like every time I was in touch with the officials from the...Internal Affairs Unit, there had been some setback in the investigation. For example, responsibility for my complaint changed hands several times, and as investigators were reassigned or retired, I became convinced that nothing would ever happen to that police officer. I knew that he was still working in the same position, and I feared that he was continuing to sexually abuse other innocent women on the streets and at the police station.

I myself have been...unable to trust the Philadelphia Police Department ever since this incident. Shortly afterwards, I spent several days in a psychiatric hospital because I felt extremely paranoid and became convinced that the officer was stalking me. I walked around with a towel wrapped around my head because I did not want him to recognize me. My family was so concerned that they recommended that I stay in a hospital until some of my anxiety over the incident subsided...

The lawyer whom I had hired to represent me in a civil lawsuit against the Police Department...decided that it would be best for me to settle with them out of court. I did not agree with the lawyer's decision because I was not interested in monetary gain, but in seeing justice served. Unfortunately, the lawyer did not want to take on a case against the police department, and so he went ahead with the settlement. My portion of the settlement, after attorney's fees and expenses, was [\$5,500], which is hardly restitution for the injustice I suffered.

In any case, my understanding was that the Internal Affairs investigation had been closed by then, and I had given up all hopes until the reporters from the Philadelphia Enquirer asked if they could write an article on my case. I agreed, and the reporters who wrote the story did more investigation of my complaint than the Office of Internal Affairs had done, forcing them to go back and...take a closer look at my case.

The difficult part of having an article about my case published was I was worried that it would be dangerous for me...I still feel paranoid and tense when I see a police officer...After the article was published...two police officers approached me on the street and told me that they had recognized me, the girl that had made the allegations against the officer. This was very frightening to me. I felt very wary that I would face possible retaliation from other police officers.

Despite my fear of retaliation, I am so glad that I took the risk to speak out about what happened to me and my friend...The Office of Internal Affairs published a report sustaining all of my allegations and finding five different police officers, most importantly, the one who sexually violated me and my friend, guilty of misconduct for their actions that night. The abusive officer will probably be terminated. Four others were found guilty of trying to cover up the incident and will probably face suspension. I am saddened, of course, that the officer who subjected us to such abuse will not be prosecuted. The District Attorney's Office has found that despite the findings by Internal Affairs, there is [insufficient] evidence to charge him with a crime.

My spirit has been lightened and I'm also so relieved that I've finally been vindicated and that the officers have finally been held accountable. However, I am disappointed that it took more than three years for Internal Affairs...to not do their jobs in this case. If it hadn't been for those caring reporters at the Philadelphia Enquirer, I might have never been believed and the officer would not have been held responsible.

So often the public and the criminal justice system do not believe complaints of sexual abuse made by people behind bars. I never should have been picked up by the police that night. My friend and I were at the police station only to satisfy the sick desires of the abusive officer. I told the truth about what he did to us, yet because it was incorrectly assumed that I may have been engaging in criminal activity, officials within the department and the public doubted my word against his.

I...encourage the Commission to take steps to ensure that all of the complaints of sexual abuse against detainees and anyone else caught up in the criminal justice system are treated seriously. Such complaints must be promptly and fully investigated and perpetrators of such violence must be prosecuted. Despite my innocence, I was held at a police lock-up in a situation where no one else knew where I was or what was happening to me. The police had all the power and I had none, and no one within the police department was apparently willing to challenge what this rogue officer did to us.

I thank you again for providing me the opportunity to speak to you today...I just wanted to say thank you (National Prison Rape Elimination Commission 2007a).

Genger Galloway, the mother of an incarcerated juvenile, testified before the Commission in Austin, Texas, about the incidents of sexual victimization her son suffered while in confinement, including mistreatment at the hands of a female correctional officer. Portions of her testimony follow:

Good afternoon. I would like to express my sincere gratitude to the Commission for hearing my testimony today. I am here seeking justice for the young people being sexually victimized in Texas Youth Commission facilities. My son Joseph, now 19 years old, is...one of those victims.

My son should have never been placed in a juvenile detention facility, but a number of unfortunate circumstances led to it. As a young boy, Joseph suffered from attention deficit hyperactive disorder and was diagnosed as possibly bipolar. He received extensive treatment for these conditions, including a brief hospitalization in a pediatric psychiatric facility hospital.

When Joseph was 15, I discovered that he had inappropriately touched his twin siblings, and I had to make one of the most difficult

decisions of my life. Trying to do the right thing for all of my children, I reported his conduct to the authorities. He had never been in trouble with the law before, and I just wanted him to receive the proper mental health treatment to ensure that he would not abuse his siblings again.

Only then did I learn...that when he was 8, a friend's 18-year-old brother had raped him. I was devastated, but sadly, the decision of what to do for my son was already out of my husband's and my hands. Instead of receiving the help he needed, Joseph was taken into custody and placed in a juvenile detention center in another county far from home. He was forced to sleep on a cold concrete bench in a filthy facility for a month.

Things only got worse for Joseph after that...He was put on trial, and the judge released him into my husband's and my care with a sentence of probation. On that very same day, however, Child Protective Services threatened to remove our younger children from our home if Joseph was living there. Frantic, we returned to the judge seeking help. Instead of being able to take our son home, we were told that the county had no money to place him in a treatment facility and that he would be placed in the custody of TYC. We were assured, though, that he would be detained for no more than nine months, by which time funds would be secured to place him in an appropriate treatment facility.

Four years later, my son continues to be incarcerated...and the lives of my entire family have been turned upside down in the process. Joseph was initially held at the Marlin...Unit. This facility boasts that juveniles housed there will be treated with respect and provided a safe and secure environment. Unfortunately, this was not my son's experience. Shortly after he arrived at Marlin, a staff person beat him and broke his nose without provocation...

When he was 15, Joseph was transferred to the Giddings State School, a TYC facility...Staff at this high-security facility, which offers specialized treatment for violent youth and sex offenders, sexually violated my son...in a kitchen washroom that was out of sight of cameras, a female staff person forced herself upon my son and performed oral sex on him. My son did not report this incident at the time because he thought no one would believe him...

After this first incident, my son was raped by another inmate. He had a disciplinary violation and was sent to a security housing area. Because this area was made up of punitive housing for disciplinary violations, each cell was supposed to hold only one juvenile. However, all the cells were full that day, and an 18-year-old juvenile, who was much larger than Joseph, yelled out to the staff person...charged with

housing him, "Put him in with me. I want to F him. I want some white ass."

This officer must have had it in for my son, because he opened the door to that 18-year-old's cell, and he pushed my son inside and locked the door. The officer then remained outside the cell, only twenty-five feet away, while the older juvenile beat him and then raped him...My son screamed for his life. No one intervened...When the attack was over, my son laid there bruised and bleeding from his rectum.

The officer involved in the assault committed suicide two weeks later. Joseph received no medical treatment or other assistance afterward. And to our knowledge, no immediate action was taken against the officer or the inmate...

Later, when he continued to bleed with each bowel movement, my son sought help at the facility's infirmary. Afraid to report the rape, he told the medical staff he was suffering from hemorrhoids. An infirmary employee asked him if he had been sexually assaulted. My son responded, no, because he was ashamed and in fear of being labeled a punk and targeted for further sexual violence. Instead of alerting a senior facility staff that she suspected that Joseph had been sexually assaulted, this employee did nothing further. To this day, nearly four years later, he still has rectal bleeding when he goes to the bathroom.

When my son told me about these incidents of abuse...during a family visit, I immediately called a caseworker over to our table and told her about it. She looked at my son and said, "Yeah, right. You see, that's why you're still here." When I insisted that she report this crime to law enforcement authorities, she refused, saying, "We'll handle this internally our own way...We're going to talk about this in group session later." When I protested the...manner in which the caseworker responded, she reported me to the staff in charge of the visiting area, who demanded that I settle down.

There has been no investigation into what happened to my son by TYC authorities at either...facility...where these took place, nor have they made any effort to interview my son or perform a physical examination that might detect the injuries he sustained during the rape by the other inmate. Fortunately, the Texas Office of the Inspector General and the Texas Rangers each initiated investigations earlier this year that are still ongoing.

Our son...has received many disciplinary violations over the years, which I believe were unjustified and that have extended his time

behind bars. I am convinced that TYC has issued these in order to retaliate against me for my outspokenness...

My son is hopeful these days. He seems relieved that he has finally been able to talk about what has happened to him, though he has received no mental counseling related to the sexual assaults he endured. And he hopes that by speaking out, he will make a difference, both for himself and other kids in the TYC system. Still, I worry about him. How he has coped all these years, with what he has been through, and how defeated he will be if he is not released soon.

The current TYC system is an obvious failure, and the senior administrators have largely refused to take responsibility for the mess. But there are some obvious steps to be taken toward making TYC facilities safer.

First, there must be put into place an independent oversight agency with the ability to monitor TYC facilities and investigate complaints of abuse. At least until the public has regained trust in the TYC, a system of regular unannounced visits by an independent agency should be implemented. In addition, instances of overcrowding and understaffing must be dealt with and the staff-to-offender ratio decreased.

Next, the State must require regular and ongoing training for TYC employees, particularly those who come into contact with juvenile detainees. The TYC must conduct mandatory background checks and fingerprinting of all applicants and ensure that no applicants who were terminated or resigned from prior positions as a result of substantiated allegations of sexual abuse are hired. TYC employees must be held accountable for protecting the juveniles in their custody and taking proactive steps to ensure that they are not at risk of sexual violence, either by inmates or staff. Employees must know that when they become aware that sexual violence is occurring or that attempts or threats of sexual abuse are made, that they have a duty to report it.

I have many years of work experience with TYC and the Texas Department of Criminal Justice, as a nurse and an emergency medical technician, and I have concerns about whether TYC staff is adequately trained in responding to sexual abuse behind bars. Staff must be trained in how to recognize a victim of sexual abuse, and the proper steps must be in place to treat these victims. If sexual assault examinations are to be administered on site, rape kits must be mandatory for TYC medical departments and medical staff must be trained in using them. Procedures must be in place to ensure that they are administered and preserved appropriately. Lastly, all juvenile

offenders must be informed that they can report sexual abuse and how to do so in a safe, confidential manner...

I thank the Commission again for the opportunity to testify here today (National Prison Rape Elimination Commission 2007a).

Qualitative Analysis

Many common threads run through the testimony of the inmate victims and their family members and advocates who testified before the Commission and elsewhere. Several of the correctional officers mentioned in the testimonies of the witnesses were reportedly successfully prosecuted for their sexual assaults (National Prison Rape Elimination Commission 2005a, 2006, 2007b). Such dispositions would tend to support the claims of the witnesses with respect to their accounts of the incidents in question.

For the most part, the inmates whose testimonies or histories were reviewed had committed non-violent or even minor crimes, and/or had generally been put at a disadvantage while in confinement, owing to their physical stature, youth, or sexual orientation (Jenness et al. 2007, National Prison Rape Elimination Commission 2005a, 2005b, 2006, 2007b). Witnesses told of perpetrators who had been prepared to utilize as much violence as was necessary to get their victims to submit to their sexual attacks - perpetrators who reacted with only amusement to the misery of their victims once the rapes were over (Alarid 2000, National Prison Rape Elimination Commission 2005b). Victimization sometimes included becoming the personal sexual property of the attacker over a period of time. T. J. Parsell, who told the Commission of the

brutal gang rape he endured at age seventeen, was eloquent in his description of the phenomena of prison sexual assault as something that “approached legitimacy in the sense that it’s tolerated” by a lack of prosecution, responsiveness, or even sensitivity by corrections officials (National Prison Rape Elimination Commission 2005b).

Several of the inmate victims were new to prison life when they were first sexually assaulted (National Prison Rape Elimination Commission 2005a, 2005b, 2007a). Their efforts to simply avoid their predators were largely unsuccessful. Many of the witnesses found fault with prison and jail administrators and other correctional employees at all levels who were inattentive or indifferent to the sexual assaults in their midst; actively hostile to inmate victims; or who actually facilitated assaults by inmates or other staff (Alarid 2000, National Prison Rape Elimination Commission 2005a, 2005b, 2006, 2007a).

The horrific experience of Linda Bruntmyer, who testified to the Commission about the suicide of her 16-year-old son Rodney after his reports to correctional authorities of multiple forcible rapes by other inmates were ignored, raises a question of the extent of a possible correlation between prison rape and prison suicide. The despair Ms. Bruntmyer’s son endured during what was to have been an eight year prison sentence, translated into a lifetime of profound sadness for her and her family (National Prison Rape Elimination Commission 2005a). The victims of prison rape are not only the convicts. They include convicts’ families, and others. Erica Hejnar, who testified about being caught up in a drug sweep in the streets of Philadelphia and then brought to a police station

where she and her friend were sexually humiliated by a Philadelphia police officer, was apparently never even arrested, let alone charged with or convicted of any crime (National Prison Rape Elimination Commission 2007a).

A common theme from several of the inmate witnesses and their advocates was that the inmates' crimes did not warrant the punishment of sexual abuse (Amnesty International 1999, National Prison Rape Elimination Commission 2005a, 2005b, 2007b) even if they had committed some offense that warranted incarceration. Many of the witnesses described in detail the long-term effects that inmate victims and their families suffered as a result of prison sexual victimization, including life-long physical injuries, loss of personal relationships, mental illnesses, and suicidal ideation as an almost common theme (National Prison Rape Elimination Commission 2005a, 2005b, 2006, 2007a, 2007b). Some of the witnesses expressed their shame and humiliation, and how they felt guilty that they had allowed themselves to be victimized, even though they had been terrified to come forward when they were locked up and felt otherwise helpless to keep from being attacked (National Prison Rape Elimination Commission 2005b, 2007a).

Former inmate Gary Cunningham, in his testimony before the Commission, described the crippling sense of panic experienced by rape victims, including rape victims in prison, when trying to figure out what to do before, during, and after being victimized. Mr. Cunningham talked about the utter frustration felt by inmate victims at the reaction, or lack of reaction, of prison staff and administrators to inmate reports of abuse. As someone who had first-hand

experience with incarceration and being a victim of sexual assault, he testified that corrections officials who believe sexual assault inside confinement facilities is, at worst, a small problem, are simply wrong, and that those attitudes are responsible for the low rate of inmate reporting (National Prison Rape Elimination Commission 2005a).

Chance Martin, who testified before the Commission about how he had been brutally anally raped with a broomstick in a county jail more than thirty years earlier, described his deep sense of humiliation as a result of the ordeal, and his feelings of shame for having allowed himself to be in the position to be victimized. The event that would forever haunt him was the unexpected result of being in the wrong place at the wrong time at a high school pot party. Mr. Martin could not seem to forget that his real-life nightmare was apparently utterly unnecessary because it could have been prevented, in that it occurred at a place and time when there was little or no supervision of the inmates by the jail officials on duty. Mr. Martin suggested that the experience of being raped in prison might have permanently shaped his sexual identity. (National Prison Rape Elimination Commission 2005b).

Testimony from and about inmate victims of correctional staff sexual exploitation highlighted incidents on a continuum from promises that the staff had made to their victims of favors and benefits in return for sexual submission, coupled with threats of loss of privileges and more time in prison for those inmates who refused to submit, to out and out forcible rape (National Prison Rape Elimination Commission 2005a, 2006, 2007a, 2007b). Despite their

personal horror stories, some of the victims and their family members made statements that included expressions of disappointment, as citizens, that government employees – law enforcement officers – would so egregiously fail to uphold their duty (National Prison Rape Elimination Commission 2005a, 2007a).

Mayra Soto, a transgender former inmate, testified to the Commission that after she complained about being sexually assaulted by a correctional officer who eventually pleaded guilty to criminal charges in connection with the attack, she experienced hostility from other officers who had nothing to do with the incident, and was eventually placed into protective custody (National Prison Rape Elimination Commission 2006). In Ms. Soto's case, as in many if not most such cases, that protective custody meant solitary confinement – a status that is supposed to be, and is in fact, a punishment.

In New Hampshire, the actions of Sgt. Douglas Tower, as described in the testimony of Sandra Matheson, the state's director of victims' services, epitomized the term "abuse of power." Sgt. Tower's appetite for sexual victimization was seemingly unquenchable. In about a year, as a matter of record, he criminally abused no less than a dozen women. Sgt. Tower's techniques to get what he wanted ranged from friendly requests to extortion to violent physical assaults. His case illustrates the amazing power that a correctional official can have over persons in his or her charge. That authority included the ability to cause inmates to serve substantial amounts of time behind bars over and above their minimum sentences, and the discretion to determine where they would serve that time and whether or not they would be able to visit

with their children and other loved ones while they served that time (National Prison Rape Elimination Commission 2007b).

Sgt. Tower's case is a text book example of how a rogue correctional officer can intimidate his victims (for a time) into silence. He virtually dared some of his victims to come forward by taunting them with his claim that they would not be believed if they did so, based on his professed friendship with the community corrections director – a tactic similarly employed by Officer Michael Chaney in Texas against inmate Gary Cunningham (National Prison Rape Elimination Commission 2005a). This suggests there may be certain common methods that prison staff sexual exploitation perpetrators use to abuse their power. For example, Moises Ballista, the correctional officer named in the lawsuit by inmate Christina Chao against him and other Massachusetts prison officials, was so bold that he actually came forward to warn authorities that Chao would be filing a sexual abuse complaint against him, a claim he said was false at the time but later admitted was true (Chao v. Ballista et al. 2011). The confidence of staff perpetrators in carrying out their abuse over extended periods of time often results in inmate victims feeling powerless to stop it. Many of Sgt. Tower's victims were able to leave the halfway house every day to go to work, yet they were still apparently unable to overcome their fear of reprisals and their lack of faith in the criminal justice system long enough to make a complaint against Tower, whose sheer audacity raises the question of whether he ever thought he would be caught (another thing Tower and officers Chaney and Ballista had in common – they all got caught). But why didn't Sgt. Tower's years of experience working in

the prison system deter him from behavior that he knew could (and did) result in him receiving a prison sentence of his own that probably will result in him spending the rest of his life as an inmate?

Testimony was found from only one of the witnesses who testified before the Commission regarding the sexual abuse of a male by a female. That testimony was from Genger Galloway, herself an employee of the Texas criminal justice system. Ms. Galloway's teenage son, a 15-year-old with a history of mental illness, was incarcerated in Texas, where he was sexually assaulted by a female staff person in a kitchen washroom that was, for some reason, outside of the view of the prison surveillance cameras (National Prison Rape Elimination Commission 2007a).

A number of the witnesses made a point to express their appreciation to the Commission, and to others, including the media, who were interested in their cases, and to those correctional staff who tried to protect the inmate victims. Several of the witnesses expressed their resolve to do what they could to help prevent inmates from being sexually victimized in the future. They took the trouble to make suggestions to the Commission about how correctional administrators could better manage their facilities in order to prevent sexual victimization of inmates, and how prison investigators could better act to preserve the dignity of victims while gathering the evidence (National Prison Rape Elimination Commission 2005a, 2005b, 2006, 2007a, 2007b). Their dramatic testimonies suggest that future study of prison rape will benefit from data

obtained not only from correctional administrators and inmates, but also from inmates' family members, and former inmates, as well.

CHAPTER IV

DISCUSSION

Limitations of the Study

The four databases looked at for this study each have different definitions for what could be broadly called sexual victimization, thereby limiting the usefulness of comparisons between the four data sets. Each of the four studies measures something at least slightly different than do the other studies. However, at a minimum, an examination of some of the statistics standing alone, but in the context of the other data, might provide some guidance for conducting future research. For example, the UCR, the NIBRS, and the NCVS studies for 2008 all arrive at rates of sexual victimization (again, each using at least a somewhat different definition of that term) of from 0.30 to 1.19 per 1,000 persons in the nation's communities (FBI 2001, N.H. State Police 2009, Rand 2009). For that same year, the PREA victimization rate of 3.82 inmates per thousand, as reported by prison officials, suggests that the incidence of sexual assault in prisons is substantially greater – from three to ten times greater - than it is in the community; and the 2008 PREA data from inmates suggests that the incidence of sexual assault in confinement facilities could be more than 100 times that in the community (Guerino and Beck 2011, Beck et al. 2010).

None of the databases examined provide the gender of the victims broken out by the gender of the perpetrators. The limitations of the UCR in this regard

are obvious and have been discussed. The NIBRS, the NCVS, and one of the PREA studies each provide a breakdown of their data by gender of the victim and gender of the perpetrator; however, none of these databases provides data on the genders of the victims, broken down by the gender of the perpetrator, or the genders of the perpetrators, broken down by the gender of the victim. For example, the 2008 PREA data reflect that 18% of the 931 substantiated allegations of sexual misconduct were committed by women, and that 23% of the victims in those 931 substantiated cases were women (Guerino and Beck 2011); however, the data do not show what percentage, if any, of the female staff member perpetrators' victims were women and what percentage, if any, of their victims were men. Such data could cast some light on the nature of sexual assault of inmates in prison by correctional staff.

Prisons, the environments from which the PREA data have been collected, in addition to being natural habitats for sexual violence, are notorious for being places where deception thrives (Smith 2003). Prisoners are not generally well known for being forthcoming about what happens in prison, and when they do talk, there is often a likelihood of misinformation that nearly always exceeds that found in almost any other venue. Put simply, as did one newspaper article about reports of rampant abuse of inmates by correctional officers in several Pennsylvania prisons, "After all, prisoners tend not to be the most reliable sources" (Stroud 2010). In large part, the PREA studies rely on inmate testimony. Therefore, the validity of the PREA data may warrant an unusually high level of scrutiny. The stated goal of the PREA is to bring the incidence of rape in prison

down to zero. Unfortunately, it seems likely that there will be many more years of study and many more years of data before the goals of the Prison Rape Elimination Act are attained.

The PREA Findings

Certainly, means exist now to reduce, if not eliminate, prison rape in this country. The PREA should play an important part in accomplishing that goal. The PREA made a number of “findings” about the phenomenon of prison rape (Prison Rape Elimination Act 2003). The findings were made with the passage of the PREA following a Congressional hearing on April 29, 1993 (U.S. Congress 2003). Those findings are discussed here. Then, this study attempts to go a step further than Congress did, by making an analysis of the quantitative and qualitative data examined here in the context of the PREA findings, and by providing commentary, and in some cases, recommendations for actions that could eliminate, or at least reduce, the incidence of sexual exploitation in America’s prisons and jails.

- a) PREA Finding: More than 2,000,000 Americans were locked up at the end of 2001. In 1999, there were more than 10,000,000 separate admissions to and discharges from prison and jails.

Analysis and Commentary: This is probably one PREA finding that would not generate much dispute among students of the American prison system. Whatever its failings, there is little to suggest that the system has not been able to keep track of how many prisoners it has at any one time, or how many individuals it has admitted and discharged. However, going back two decades,

prison overcrowding has been one of the top issues in American criminal justice (Kelly and Eklund-Olson 1991). At least one author cited here (Dumond 2000) believes that the prison population has increased to “record proportions.” Another study finds, “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” (Mariner 2001).

While no statistical data were found for this study to demonstrate that an overcrowded system would exacerbate any problem of prison rape, it seems unlikely that such a condition would help the problem. Moreover, some studies have shown that overcrowding, in addition to decreasing the level of inmate supervision by staff, can lead to increases in inmate deaths, including suicides; psychiatric commitment rates; and the number of disciplinary infractions (Barrett 2005, Huey and McNulty 2005). The testimonies of several of the witnesses before the Commission support the idea that new inmates are likely targets for sexual assault (National Prison Rape Elimination Commission 2005b, 2006). The PREA finding regarding the enormous numbers of new admissions to confinement facilities each year suggests that these likely targets are in ready supply.

- b) PREA Finding: There has been “insufficient” study of the incidence of rape of Americans in custody; however, “experts” have conservatively estimated that 13% or more of the prison population - more than 1,000,000 individuals in the last twenty years - may have been subjected to sexual assault while in confinement.

Analysis and Commentary: The observation that there has been a lack of study about prison rape is found within literature published before and at the time of the passage of the Prison Rape Elimination Act in 2003 (Dumond 2003, Eigenberg 1989). Other literature points out the lack of study of certain aspects of rape in prison, such as the sexual assault of women inmates by other women inmates (Alarid 2000) or the impact that the attitudes about prison rape of correctional officers (Hensley, Struckman-Johnson and Eigenberg 2000) or wardens (Moster and Jeglic 2009) could have on its occurrence. The finding by Congress that there has been “insufficient” study is a somewhat softer statement than that there has been a “lack” of study. How much study is sufficient?

Likewise, Congress’s finding that “experts” estimate that 13% of prison inmates have been raped is no doubt true. Several of those experts have been cited in this study. However, it is also true that other experts have estimated the incidence of prison rape at much lower rates (Beck and Harrison 2006, 2008, Beck, Harrison and Adams 2007, Beck et al. 2010), and in some cases, even higher rates (Jenness et al. 2007, Lipscomb et al. 1992, Wooden and Parker 1982).

- c) PREA Finding: Mentally ill and young first-time offenders face an increased risk of sexual victimization when they are incarcerated.

Analysis and Commentary: In his testimony before Congress in support of the pending PREA legislation in 2003, Frank Hall, a former high level administrator of corrections departments in Massachusetts, Maryland, Oregon,

and elsewhere, stated that this country's correctional facilities hold more mentally ill persons than do the nations' psychiatric hospitals. Mr. Hall went on to say that "experienced correctional professionals know that inmates with mental illness are at increased risk of sexual assault," but did not cite any scientific studies to show a correlation between mental illness and prison rape victimization (U.S. Congress 2003). However, studies reviewed by Dumond (2000, 2003) suggest such a correlation does exist.

On the other hand, California researchers conducting empirical research into that state's massive prison system find the incidence of sexual assault victimization "not particular to any inmate demographic" with respect to "inmates with and without a history of mental health problems" (Jenness et al. 2007). Nonetheless, an inmate with mental illness may not be as quick to identify himself as such when questioned about his mental health, as compared, for example, to his race or date of birth. Inmates who do not suffer the handicap of mental illness may have an advantage over inmates with that stigma, with respect to potential sexual victimization; this question merits further research.

The increased risk of sexual victimization young first-time offenders face when they are incarcerated was dramatically demonstrated by the testimonies of inmate victims and their advocates before the Commission (National Prison Rape Elimination Commission 2005a, 2005b, 2007a). The heightened risk of sexual assault for that group of offenders is also cited in literature examined in this study (Chonco 1989, Dumond 2000, 2003, Man and Cronan 2001, Mariner 2001, Robertson 2003), but not everywhere, in that, again, Jenness et al. (2007) find

that younger California prison inmates, ages 18 through 25, “did not report sexual assault.”

By way of solutions to the increased risk of sexual victimization faced by mentally ill and young, first-time offenders, to the extent it does exist, Chonco (1989) points to prisoner classification, transfer, and segregation, all long-time administrative processes that are part of everyday prison administration, except Chonco makes the important distinction that it is the perpetrators, rather than the victims, who should be subject to housing transfers.

- d) PREA Finding: Most prison staff are not adequately trained or prepared to prevent, report, or treat inmate sexual assaults.

Analysis and Commentary: Perhaps the single most effective way to counter sexual violence in confinement facilities would be a concerted effort to raise the level of competency and the level of character of prison staff, especially correctional security staff (Layman, McCampbell and Moss 2000). When has a young man or young woman, when asked the classic question about what they want to do when they grow up, ever been heard to say that they hope to be a prison guard? How big is the disparity in status between someone who reports “correctional officer” as his or her occupation, compared to, for example, someone who can say that they are a police officer?

The less than rigorous educational requirements for working in a prison that existed a generation ago can make way for staff recruiting and development based on the theory that in order for correctional facilities to be able perform the rehabilitative function they are supposed to accomplish, they will require a work

force of intelligent, well-educated, character-driven men and women who believe in the mission of rehabilitation and the concept of justice, and who view their jobs as including a duty to protect the people they are confining from violence and abuse (Dumond 2000). The prevailing culture in the employee force of American prisons and jails, one that holds that the inmates are always wrong and the staff have to stick together, no matter what (Smith 2003), must change to more fully reflect the concept of rehabilitation that was intended to be implemented half a century or more ago when state prisons stopped calling themselves penitentiaries and started calling themselves departments of correction (Seiter 1987).

Staffing levels at many prisons and jails are astonishingly low (Barrett 2005), especially at night and on weekends. Confinement facilities are busy places on weekdays during the day, when administrators and program staffers like teachers, social workers, and much of the medical staff are on duty. It is a different story after dark and on weekends, a time when many Americans like to be away from work. Many of the incidents of sexual violence described by the inmate victims in this study apparently took place when no staff members were around to intervene, or when the only staff member present was a perpetrator (Alarid 2000, National Prison Rape Elimination Commission 2005b, 2007a, 2007b), suggesting that staffing levels at the time these incidents took place may have been low.

As state budget levels are strained to near bankruptcy from coast to coast, lawmakers look to prison administrators, like their other department heads, to cut

expenses. The PREA anticipates the objections of bottom line watchers by providing that its standards shall not result in the imposition of substantial increased costs to the budgets of affected correctional facilities (U.S. Dept. of Justice 2011). However, reducing the already meager staffing levels that exist in some confinement facilities would likely result in more, not less, sexual violence in the future (Dumond 2000). Fortunately, a substantial line of federal court cases is already in place holding that funding problems do not relieve governmental agencies from their obligation to maintain correctional facilities where the levels of safety for their residents are not in violation of the United States Constitution's ban on cruel and unusual punishment (Walton et al. 2009).

Over and above addressing staffing levels, some studies find that confinement facilities that are serious about eliminating staff sexual misconduct, especially against female inmates, must institute and implement policies that will seek to eliminate circumstances where cross-gender supervision of inmates (supervision of inmates by officers of the opposite sex), is done on a one on one basis (Amnesty International 1999). Flesher (2007) and Smith (2003) find that the best approach to limiting staff sexual exploitation of inmates is to require that they be supervised, at least as often as possible, by members of the same sex.

This study also suggests that allowing correctional officers to be alone with members of the opposite sex who are incarcerated is tantamount to an invitation to commit sexual misconduct. However, the reality of same sex abuse by staff against inmates is an argument to avoid any circumstance, whenever

possible, of having a prison staff member alone, and out of view of others, with an inmate.

Recommendation # 1: Reduce or eliminate opportunities for staff sexual misconduct. Prison and jail administrators should institute policies which reduce or eliminate occasions when correctional staff members are alone and unobserved with inmates, irrespective of the genders of the parties involved. *Staff/inmate sexual misconduct occurs between men and women, women and men, women and women, and men and men.* Violent sexual assaults cited in this study were perpetrated by or with the tacit approval of staff members against both inmates of the opposite sex (National Prison Rape Elimination Commission 2007b); and of the same sex (National Prison Rape Elimination Commission 2005a). The reality of transgender prisoners in confinement facilities further complicates this issue (Jenness et al. 2007, National Prison Rape Elimination Commission 2006). Instituting policies that keep correctional employees and the people in their custody from being alone and unobserved together could drastically reduce the opportunities for sexual misconduct, thereby actually reducing the incidence of such misconduct.

- e) PREA Finding: Prison rape often goes unreported and inmate victims often receive inadequate, if any, treatment, for the severe effects of prison rape.

Analysis and Commentary: A pro-active approach to reducing prison sexual violence could include educational programs for both inmates and staff about confidential means for inmates to report sexual misconduct, including staff

sexual misconduct, to staff members who are both trained and inclined to advocate for inmate victims. Typically, inmate grievance procedures are complicated and burdensome in terms of paperwork, which makes them difficult for inmates with little education (National Prison Rape Elimination Commission 2005a) and problematic in the area of confidentiality, which can make them dangerous for inmates whose complaints are critical of or directed against staff (Mariner 2001). Telephone hotlines and secure means for inmates to file anonymous written grievances that will actually find their way to their intended destination are essential if prison administrators are going to find out what is happening in their facilities, especially after 5:00 PM and on weekends and holidays, when staff levels are at their lowest.

There may be a correlation between the age of a prison and the level of deprivation experienced by the prisoners who live there (Huey and McNulty 2005). Many of the nation's crumbling prisons cry out for post-19th century technology. Digital video surveillance cameras can make a permanent record of a substantial portion of the geography of a given facility. Although it is probably not practical to try to place every square inch of a prison under surveillance, reducing those areas where sexual assault can occur undetected can add some level of protection to vulnerable inmates. As ancient penitentiaries are invariably replaced by modern confinement facilities, available technology should be put into place to take advantage of the lack of a right to privacy that inmates universally give up on the day they walk into prison.

Recommendation # 2: Surreptitiously place video cameras and audio equipment (microphones) to supplement cameras that are plainly visible in order to create a perception of risk and an actual risk that acts thought to be done in private are actually going to be observed and monitored, with the resulting appropriate action by authorities.

Jails and prisons are 24-hour a day crime scenes. They require their own in-house police forces made up of competent, well-trained investigators who are intent on enforcing rules and laws when they are broken within their jurisdiction, whether they are broken by inmates or prison staff (Man and Cronan 2001).

Prison investigations, particularly sexual assault investigations, require practitioners who are skilled interviewers. Successful interviews with sexual assault victims and perpetrators are among the most difficult an investigator can be asked to conduct, especially in the absence of physical evidence. Prison inmate victims come to an interview with an extremely low credibility rating, based on the mere fact that they are inmates (Stroud 2010). Correctional employees often have an inherent mistrust of prison authorities, and tend to not be forthcoming when questioned, if they can possibly avoid it (Layman, McCampbell and Moss 2000).

Prison investigators should also be trained crime-scene operatives and evidence technicians; be equipped to write comprehensible investigative reports; and be able to effectively testify in front of administrative panels and judicial bodies.

Recommendation # 3: Raise the level of professionalism for prison and jail investigators. Governmental entities, including correctional agencies, should take steps to increase the competency of their correctional investigative units to be on the same par as their best police agencies. One way to accomplish this is to require correctional investigators to undergo the same level of training and receive the same police credentials as do state and community police officers. Prison investigators with the highest level of police training available are most likely to be able to conduct investigations that will uncover prison rape where it exists in such a way as to bring the perpetrators to justice and bring a degree of safety to the victims.

Recognizing the reality of rape in prison means recognizing the obligation of people who run the prisons to properly treat victims after an attack. Victims of sexual assault often experience long-term emotional and physical injuries (Dumond 2003, National Prison Rape Elimination Commission 2005b, Walton et al. 2009). Placing inmate victims in solitary confinement in the guise of “protective custody” obviously re-victimizes the victims (Man and Cronan 2001, National Prison Rape Elimination Commission 2006), and discourages future victims from coming forward with reports of abuse. Some scholars and experts believe that overcrowding of the nation’s prisons only makes this problem worse (Huey and McNulty 2005, Walton et al. 2009). Nonetheless, despite the challenges posed by overcrowding, prison administrators looking to curb prison rape should find housing solutions for the criminals they supervise who become

crime victims while under their supervision.

- f) PREA Finding: Prison rape exacerbates the already problematical issues associated with inmates with HIV and AIDS.

Analysis and Commentary: Robertson (2003) suggests that the greatest fear of men in prison is being raped. That fear is made even worse for inmates who realize that with the threat of being raped comes the real possibility of contracting AIDS (Mariner 2001). For one study of “prison sex during the age of AIDS” 59% of inmates surveyed felt that knowledge of HIV and AIDS had resulted in less sex, but more protected sex, behind prison walls, where, according to one inmate, “even rapists now plan ahead by supplying themselves with condoms” (Saum et al. 1995). Dumond (2000) decries the real potential for inmate rape victims to contract AIDS and other sexually transmitted diseases, calling it “a significant subversion of the intent of the criminal justice system.” He asks his readers to consider the horrors of the experience of sexual assault by anyone in anyplace, and then argues that the trauma of being raped is multiplied when experienced in custody.

Recommendation # 4: Correctional administrators should delegate specialized responsibilities to combat prison rape to prison and jail health professionals at all levels. Doctors, dentists, psychologists, nurses, social workers, and other medical personal working in confinement facilities have unique opportunities to observe, report on, and treat victimized inmates (National Prison Rape Elimination Commission 2005b, 2007a). The professional obligation of these

caregivers to heal is not abated by the fact that they work in a prison or jail. Medical professionals have been an integral part of sexual assault treatment teams in the community for years. They can make a significant contribution to the efforts to curb prison sexual assault, as well.

- g) PREA Finding: Prison rape is a menace to the public, inasmuch as inmate perpetrators and victims are likely to pose an increased threat once released.

Analysis and Commentary: This theory flows from the fact that the majority of prison inmates are eventually released back into society, either through parole or “maxing out” on their sentences (Bahr et al. 2005). Those inmate perpetrators and victims who contracted AIDS or other sexually transmitted diseases or who became psychologically damaged as a result of those assaults would tend to pose a threat to members of the general public once they rejoin the community (Barrett 2005). The debate over the prevalence of prison rape takes on significance for the public at large in view of the percentage of inmates with AIDS being five times that of the general public, thereby transforming “the consequences of male rape from a correctional matter into a public health crisis” (Robertson 2003). The correlation between the incidence of prison rape and a subsequent, causally connected negative effect on the public is something that would be difficult to measure, even as the incidence of prison rape itself is difficult to measure. Nonetheless, a scientific examination of that relationship would be worthwhile, and could provide one

more good reason why the American public would want to see an end to rape in prison.

- h) PREA Finding: The frequently interracial character of prison rape contributes to a deterioration of race relations inside and outside of prison walls.

Analysis and Commentary: “No Escape: Male Rape in U.S. Prisons”

(Mariner 2001), the landmark Human Rights Watch study credited with contributing to the passage of the PREA (Smith 2005), confirms past studies that found “black on white sexual aggression in prison” is a causal factor in prison rape (Carroll 1974, Jones and Schmid 1989). The Mariner (2001) study finds support from inmates, including both victims and perpetrators from various racial and ethnic groups, for the theory that black against white inmate on inmate rape is a prevalent prison phenomenon. Jenness et al. (2007) find no such support for that theory from the inmates they studied. Smith (2005), while praising Mariner’s study as integral to the passage of the historic PREA legislation, nonetheless urges “caution” at accepting the black versus white theory, a theory perhaps as old as the one that holds that people who get sent to prison deserve to be raped. No study found for this paper had the temerity to suggest that the black rage theory could be traced back to points of view in American society that accepted or even embraced racism.

- i) PREA Finding: Prison rape is a cause of violence and a general threat to security within institutions.

Analysis and Commentary: The testimonies cited in this study of many

of the inmate victims and their advocates are evidence of the brutal violence that can be part of the prison rape experience (Alarid 2000, Jenness et al. 2007, National Prison Rape Elimination Commission 2005a, 2005b, 2007a). In his testimony before Congress in support of the pending PREA legislation in 2003, Charles J. Kehoe, president of the American Correctional Association, said, "Our mission...includes...the prevention...of...crime. Prison rape is a crime and we will continue to do our duty to prevent it" (U.S. Congress 2003).

Following Mr. Kehoe's testimony, Mr. Hall, the former administrator of corrections departments in Massachusetts and elsewhere, endorsed Kehoe's remarks; equated prison rape with institutional violence; and went even further by declaring that the act or even the threat of prison rape "increases the level of homicide" against inmates and staff." Ibid. Mr. Hall did not cite any scientific studies to show a correlation between prison rape and prison homicide, nor were any such studies found elsewhere for this paper. However, it seems reasonable that institutions created for the purpose of punishing and rehabilitating law breakers would function better when they are in conformance with the law, and that staff and managers of such institutions should, at a minimum, aspire to maintain environments that are law-abiding. This concept applies not only to violent inmate on inmate rape, but equally to staff on inmate sexual exploitation (Layman, McCampbell and Moss 2000). Correctional staff sexual misconduct creates myriad opportunities for victims and other inmates to extort the caretaker perpetrators, thereby creating security risks that could include violence to staff and other inmates, and even escapes.

- j) PREA Finding: Prison rape impedes the ability of victimized inmates to reintegrate into society.

Analysis and Commentary: Among the witnesses to provide written testimony to the Congressional committee hearing evidence on the proposed Prison Rape Reduction Act of 2003 (as PREA was known prior to enactment) was Charles W. Colson, Chairman of the Prison Fellowship Ministries (U.S. Congress 2003). Mr. Colson, the former Special Counsel to President Richard M. Nixon, had first-hand experience with prison, having received a federal sentence for his role in the Watergate case, the scandal that led to Nixon's resignation (Woodward and Bernstein 1976). In his capacity as Chairman of the Prison Fellowship Ministries, Mr. Colson sent a letter to Congress in support of the PREA, in which he wrote that prison rape "inflicts permanent psychological and emotional damage that inhibits an inmate's ability to reintegrate into society upon release" (U.S. Congress 2003). Mr. Colson cited no studies in support of his assertion, nor did he cite his personal experience. In legislatively declaring that prison rape impedes victims' reintegration into society, the record suggests that Congress relied on the qualitative evidence it reviewed, such as Mr. Colson's, rather than statistical-based studies.

Such studies exist. Needles (1996) finds that a prison stay is likely to severely limit employment and income opportunities for an offender. This is especially true for those who are on parole, and even more true for those on parole who have substance abuse problems (Martin and Scarpetti 1993). There

is even evidence that a stay in prison makes it more likely, rather than less, that an individual will commit crimes (Spohn and Holleran 2002).

Certainly, the theory that prison rape impedes victims' reintegration into society is supported by much of the testimony reviewed in this study from inmate victims of prison sexual assault and their advocates (National Prison Rape Elimination Commission 2005a, 2005b, 2006, 2007a, 2007b). This also aligns with the theory that prison rape is a menace to the public cited in sub-section g of this section of this study above, in that the trauma of being raped in prison would tend to make re-entry into society even more difficult than it would be otherwise. Recidivism is a major topic of study in the field of corrections at this time, as governmental agencies from coast to coast struggle with the problems of prison overcrowding. Failure by paroled or "maxed out" inmates to reintegrate into society frequently means those individuals will commit acts that put them back into prison (Petersilia 1999, Wilson, Gallagher and MacKenzie 2000).

- k) PREA Finding: The public at large and the government in general are unaware of the "epidemic" proportions of the problem.

Analysis and Commentary: This finding is clearly consistent with the central finding of this study: that prison rape is a hidden epidemic. Prison administrators need to initiate collaborative relationships with state legislators and state prosecutors to be sure that appropriate criminal laws are on the books to prosecute prison rape, and that those laws are enforced. In other words, corrections officials need to create stake holders outside the prison walls.

Although prison managers have historically not been among government leaders who seek out publicity on a regular basis (Seiter 1987), a public relations campaign aimed at both within and outside of prison walls could affect the public indifference to the problem of prison rape that has existed for years (National Prison Rape Elimination Commission 2007a). Moreover, having a “solid public information program” would assist correctional administrators with the “firestorm of attention that will result when allegations of staff sexual misconduct become public” (Layman, McCampbell and Moss 2000). Prisoner advocates should note Laderberg’s (1998) suggestion that class action suits against correctional agencies which fail to protect their inmates from sexual victimization have the potential to create substantial publicity, and thus create public awareness and possible pressure for investigations.

- I) PREA Finding: The prevalence of prison sexual assault constitutes a violation of the Constitutional rights of the victims.

Analysis and Commentary: “It is really like this dirty little secret that everyone in corrections knows about and doesn’t want to talk about. It is a huge problem.” So said Brenda V. Smith to Human Rights Watch (Thomas et al. 1996). Smith, at the time senior counsel for the National Women’s Law Center, was talking about the sexual exploitation and abuse of female prisoners in the United States by correctional officers. She was litigating a case entitled *Women Prisoners of the District of Columbia Department of Corrections v. District of Columbia (Women Prisoners)*, the first class action suit brought by female

inmates in response to sexual exploitation by prison staff (Smith 2003), and arguing that the actions of the offending correctional officers violated the Constitutional rights of her clients (Thomas et al. 1996).

Laderberg (1998) argues that an important aspect of the *Women Prisoners* case was that it was filed as a class action suit. She explains that a class action suit has legal advantages over a suit by a single plaintiff in that the class action is more likely to be accepted by the court in terms of a potential violation of the plaintiff's eighth amendment right to be free of cruel and unusual punishment. According to Laderberg, the court requires in such cases an examination into the state of mind of the abusive correctional officer (and that officer's superiors). Laderberg makes the point that when the evidence involves many officers, as in a class action suit, rather than just one, as (typically) in a single plaintiff suit, it may be an easier job to convince the court that at least some of the offending officers had the requisite state of mind (deliberate indifference) to qualify the case under the eighth amendment.

Legal scholars differ on the effectiveness of eighth amendment claims by inmate victims of sexual abuse. Smith (2003) suggests those claims have received "only mixed results in the courts" while Man and Cronin (2001) find that the legal standard for those claims "has been clear and generally favorable to prisoner rape victims."

If prison rape was a "dirty little secret" in 1996 as Smith (1996) suggests, the secret is out, thanks in large part to the PREA and to scholars and activists like Smith and others who have put a human face on the scourge of prison rape.

Conclusions

The public may suspect that rape happens frequently in prison, without appreciating the extent of different relationships among perpetrators and victims; the frequency of series victimizations; or the long-term consequences for victims and society long after a prison sexual assault is over.

The evidence examined in this study clearly suggests that the incidence of sexual victimization of individuals in custody in the United States substantially exceeds that suffered by those in free society, and may, in fact, have reached epidemic proportions. Future efforts to quantify that victimization with anything even approaching exactitude may be optimistic. However, continuing that work can yield more than just numbers. That process may shed more light on the nature of sexual exploitation in confinement facilities, and perhaps pave the way for finding ways to stop it.

This study further suggests that it is now clear that neither victims nor perpetrators of prison rape are defined by their gender. It is also clear that persons in confinement are victimized not only by other prisoners, but also by uniformed law enforcement and civilian employees who are being paid to supervise and protect those prisoners. This finding is made not only in the face of government studies cited here, such as the UCR, which still define rape as something that is perpetrated by a man against a woman, but also with the recognition that the occasional joke on late-night television can still be heard about the prison inmate getting raped in the shower. Nonetheless, and perhaps

more importantly, it is now the public policy of that government and the law of the land that sexual exploitation of America's prisoners is no longer acceptable.

This study also suggests that the elements of prison rape often include serial victimizations of the same victim. The testimony of inmate sexual assault victims at the PREA hearings and elsewhere combined with much of the literature reviewed, leads to the conclusion that the natural tendency of confinement facilities may be to create a class of victims within their walls who will be repeatedly abused by more aggressive and powerful inmates and staff. No one who enters custody, no matter for one night or for a life sentence, is immune from the possibility of being victimized, and the evidence suggests that once victimized, there may be an increased chance of repeated victimization. Prisons and jails that fail to take meaningful steps to protect their prisoners from sexual exploitation create a condition wherein sexual assault victims who seek such protection may actually be exposing themselves to more abuse.

This study suggests that long-term consequences exist for victims and society long after the sexual victimization incidents themselves are over. Suicide, substance abuse, the commission of new crimes following release, mental illness, and AIDS all lurk in the backgrounds of the lives of prison rape victims, probably for the rest of their lives. Those lives, in many if not most cases, will be spent back among the public who had collectively put those offenders into custody for punishment and rehabilitation.

Finally, this study includes a number of recommendations for curbing prison rape, and suggests that legal action by inmates and their advocates against

those who are responsible for protecting those inmates from sexual abuse but who fail to do so may be the most effective way to end this hidden epidemic.

Looking forward

Like many of the public reform movements that came before it, the movement to eliminate sexual victimization from the nation's confinement facilities is likely to be a long process. Public awareness and the public conscience will likely have a lot to do with it, if and when those solutions are put into place. The consideration of prison rape as a social issue is still in its infancy. The marshaling of governmental resources toward eliminating (or at least reducing) sexual violence against incarcerated individuals can be expected to have some positive outcomes. Learning more about how prevalent prison rape is; who the perpetrators are; who is most likely to become victimized by it; and what works and does not work to prevent it; is likely to play a part in fighting it (Barrett 2005). The first small steps have already been taken toward creating a society where being the victim of sexual assault is not part of the price one is expected to pay for committing a crime.

Examining prison rape is best done in the context of looking at the purpose of having prisons and jails to begin with. Society's legitimate need to punish criminal offenders should be balanced by a wish to be compassionate and a hope that rehabilitation is possible. Social scientists should always re-examine the reasons for putting people in prison in the first place and what should be done to them once they are in there. For example, with reference to the question of how prisoners should be treated, a very limited number of states allow

conjugal visits – overnight visits of spouses in a quasi-private setting with the understanding that sex between the couple is allowed. California and, perhaps surprisingly, Mississippi, are two states that permit this practice (California Dept. of Corrections 2011, Hopper 1989). Although conjugal visits have their advocates (Jones and Schmid 1989), available research is quite limited (Bennett 1989), and what exists does not suggest that these types of visits are a solution to the problem of prison rape (Ibrahim 1974); however, further study of the issue makes sense (Smith 2008).

Scholars and social scientists are coming to grips with the concept of rape victims who are not female, and rapists who are not male. There is some indication of discrimination in the prosecution and sentencing of male correctional staff who have abused female, rather than male inmates (National Prison Rape Elimination Commission 2005a, 2007b). Likewise, there may be similar discrimination when it comes to female staff members who have abused male inmates. More data are needed, specific to the genders of perpetrators and victims, before the extent of this discrimination, if any, can be determined.

There may be a gap between what the American public perceives and what is reality regarding the gender of sexual assault perpetrators and sexual assault victims. That is to say, the public may have underestimated the incidence of rape involving female perpetrators, and may have seriously underestimated the incidence of rape involving male victims. This is expected to be especially true, in light of the available PREA data, when it comes to sexual assault in confinement facilities. Examining that perception gap could be helpful with efforts

to find ways to reduce the incidence of sexual assault in America, especially in the country's prisons. Moreover, if conventional wisdom has been that "maleness" is an elemental factor in the makeup of a sexual assault perpetrator (Gottfredson and Hirschi 1990, McKibbin et al. 2008), reconsideration of that presumption may be in order in view of data that are now becoming available.

The late twentieth century movement for sexual equality may have played a prominent role in prodding society to take a closer look at the phenomenon of sexual assault (Myers and LaFree 1982). It may therefore be ironic if a continuation of that examination were to lead to a conclusion that women are not the only victims and men are not the only perpetrators of sexual victimization.

The study of rape in prisons and jails should take place in the context of the study of sexual assault elsewhere. Recent scholarship on the subject of *wartime rape* starts with the question, "Why do men rape?" and then rejects the theory that such violence is a "purely socio-cultural phenomenon" and not "about sex" and then, importantly, goes on to argue in favor of finding ways to eliminate this age-old institution of human violence (Gottschall 2004). As a public health issue, sexual violence has already been defined as, "any sexual act, attempt to obtain a sexual act, unwanted sexual comments or advances, or acts to traffic, or otherwise directed, against a person's sexuality using coercion, by any person regardless of their relationship to the victim, in any setting, including but not limited to home and work" (Krug et al. 2002). If scholars and activists are better able to understand the many incarnations of sexual assault perpetrators and

victims, in and out of prison, perhaps real progress can be made in reducing the incidence of rape everywhere.

The issue of prison rape provides an exceptional opportunity for academics and activists to collaborate. The study of and action against sexual assault inside prison walls can contribute to the movement against sexual violence in the community.

APPENDIX

TABLE Rates of Sexual Abuse by Study Entity 2008*

Program Name	Offense Studied	Population Examined	Victim Rate	Victim Gender	Perpetrator Gender
UCR	Forcible rape	Approx 300,000,000	0.30 per 1000	Unknown	Unknown
NIBRS **	Rape	1,315,809	1.19 per 1000	Fem 83% Male 17%	Male 92% Fem 8%
NCVS***	Rape & sex assault	Approx 252,000,000	0.80 per 1000	Fem 81% Male 19%	Male 79% Fem 19%
PREA**** Officials	Sexual violence	2,017,000	3.43 per 1000	Male 77% Fem 23%	Male 82% Fem 18%
PREA Inmates	Sexual abuse	76,459	37.42 per 1000	Unknown	Unknown

* PREA officials data is from 2007-2008 PREA inmate data is from 2008-2009

** NIBRS data is from New Hampshire only

*** Data regarding gender of perpetrators and victims is from single-victim cases only

**** Data regarding gender of perpetrators and victims is from substantiated cases only

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