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Lawbeat

***16 BRUTAL FINDINGS**

Prison Rapists go Unpunished, Victims go Unrepresented

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The last thing M.R. says he remembers about New Year's Eve day 1995 was eating a piece of corn-bread in the dayroom of a Texas state prison.

The next thing that he knew, he was in a hospital with several broken bones, a dislocated shoulder, two major concussions and an impression on his forehead in the shape of a combination lock. The lockmaker's name--Master--was clearly visible on his skin.

M.R. is one of dozens of inmates whose stories are told in No Escape: Male Rape in U.S. Prisons, a new report by Human Rights Watch, a New York City-based advocacy group.

Ongoing Attacks

For M.R., the events that led to the attack in the dayroom began about six months earlier, when he made the mistake of telling the prison chaplain that he had been raped by a fellow inmate. The chaplain had him write out a statement for the prison's internal affairs department, whose investigator brought him and the alleged rapist into a room together and asked them what happened.

While terrified of telling the story in front of his alleged assailant, M.R. says he repeated the accusation. The other inmate admitted the two had had sex but claimed it had been consensual. Then the investigator sent both men back to their cells, telling them he wasn't interested in hearing about "lovers' quarrels."

M.R. says he was raped again immediately upon returning to his cell. Over the next six months, the rapes not only continued but became increasingly violent. He filed several more complaints with prison officials, but all were dismissed as unfounded.

Then came the episode in the dayroom, where M.R. says his memory suddenly went blank. That's when the man M.R. accused of raping him on at least eight separate occasions attacked again, this time in front of a roomful of witnesses. The inmate came up behind M.R., nearly beat him to death with the combination lock and raped him.

Notwithstanding the violent nature of the attack and M.R.'s best efforts to press charges, his alleged assailant was never charged with any crime.

That comes as no surprise to Joanne Mariner, deputy director of the Americas Division of Human Rights Watch and author of the groundbreaking report.

Mariner says most prosecutors are not interested in prosecuting crimes against inmates. They prefer to treat them as an internal matter, one best left to prison officials to handle administratively.

Of the more than 100 prison rapes reported to Human Rights Watch, Mariner says, not one resulted in the filing of criminal charges against the alleged perpetrator.

Scarcity of Witnesses

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According to E. Michael McCann, Milwaukee County (Wis.) district attorney, prosecutors are indeed reluctant to prosecute such cases--but for good reason.

"These cases are extremely difficult to prove," he says. "Typically, witnesses choose not to cooperate with the investigation--nobody wants to be seen as a snitch in prison. And even when they do cooperate, they're saddled with very extensive records," making them less than ideal witnesses.

As an example of how challenging it can be, McCann recalls a case in which a prisoner fought to the death rather than succumb to rape. There were four men in the cell. "Everyone 'slept' through it," McCann says. "It is extremely hard to prove."

What's surprising about M.R.'s case, Mariner says, is that the alleged assailant, who spent 15 days in disciplinary segregation for the attack, was punished at all.

Prison officials rarely do the kind of investigation necessary to support a finding of rape, Mariner says, so most prison rapists escape punishment altogether. And those who do get disciplined are usually charged with a lesser offense, such as disorderly conduct, which is punishable by only a few days or weeks *17 in solitary confinement.

The report, based on interviews and correspondence with more than 200 prisoners in 34 states, found that inmate rape is a common and widely accepted--if not actively encouraged--fact of prison life.

But it doesn't have to be, Mariner says.

By taking a few simple measures to prevent and punish rape, she says, prosecutors and prison officials could dramatically reduce--if not eliminate-- the rampant sexual abuse that now exists behind bars.

According to the report, certain inmates are targeted for sexual abuse from the moment they enter prison due to their age, size, physical appearance, mannerisms, sexual orientation and other characteristics that mark them as potential victims.

In extreme cases, the report found that prisoners who have been raped become slaves to the inmates who raped them, satisfying their sexual demands, doing chores and even being rented out, sold or traded to other inmates.

Inmates who try to report a rape often find that the guards don't want to hear about it, Mariner says. They tell the inmate to act like a man and fend for himself or insinuate that he must be homosexual.

Still, Mariner says, "Rape is in no way an inevitable consequence of incarceration. But it is a predictable one if prison and prosecutorial authorities do so little to prevent and punish it."

Huge Legal Hurdles

Civil litigation, as well, offers little hope for a legal remedy to victims of prison rape, according to the report.

For one thing, a 1996 law barring the Legal Services Corp. from funding legal aid organizations that represent prisoners has greatly reduced the number of public interest lawyers available to litigate claims on behalf of inmates. And most private lawyers aren't interested in pursuing cases alleging prison abuses because those types of cases are known for being difficult to win and not particularly lucrative.

Another 1996 law, the Prison Litigation Reform Act, created a whole new set of legal obstacles for prisoners seeking to challenge the conditions of their confinement, including a requirement that all consent decrees be narrowly drawn and automatically subject to expiration after two years.

Other provisions of the act restrict the granting of attorney fees in successful cases and bar the recovery of damages for pain and suffering not accompanied by physical injury.

The legal standard for prison liability also creates a perverse incentive for authorities to ignore the problem of inmate rape, according to the report. A "deliberate indifference" standard applies to legal challenges to a prison official's failure to protect prisoners from being raped.

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The standard requires the prisoner to prove that the official had "actual knowledge" of a substantial risk to the inmate and ignored it, Mariner points out. "It gives prison officials a good reason not to know what's going on in their own institutions because the less they know about the situation, the easier it is for them to escape liability," she says.

Richard Tewksbury, a professor of justice administration at the University of Louisville who has done his own research into the issue of sexual abuse in prison, says there is nothing in the Human Rights Watch report that he didn't already know.

But Tewksbury says he thinks the public will react with a "fair amount of disbelief and some shock" to the suggestion that prison rape is "as common and as violent and as ugly" as the report makes it out to be.

"This report is bound to open some eyes," he says.

Tewksbury says he thinks the problem of inmate rape is due in large part to the fact that most prisons are overcrowded and understaffed.

But he says he doesn't blame the guards, who work hard at low pay under difficult conditions. They can't watch every inmate 24 hours a day, he says. And they tend to develop a healthy sense of skepticism that comes from dealing with people whose entire life is devoted to pulling the wool over their eyes, he says.

Tewksbury says he has also met many prison officials who take the issue of inmate rape very seriously and are deeply troubled by the problem.

Tom Cahill, president of the prisoner rights organization Stop Prisoner Rape, maintains that corrections officials could substantially reduce, if not actually eliminate, the problem simply by segregating potentially dangerous inmates from those who are most likely to become victims, as some institutions already do.

But more of them don't segregate inmates, he says, because the threat of rape is used as a management tool to maintain control over the inmate population.

"Without it, they'd lose one of their most effective weapons," he says.

Challenge In California

That's why all eyes are now focused on the federal civil rights suit filed by Eddie Dillard, a former inmate at California's Corcoran State Prison. Dillard alleges that guards there intentionally set him up to be raped by placing him in a cell with a known rapist as punishment for an incident in which he kicked a female corrections officer.

Dillard, a 21-year-old, 120-pound first-time offender, was placed in a cell with Wayne Robertson, a 6-foot-3-inch, 230-pound convicted murderer known as the "Booty Bandit," who admits that he repeatedly beat and raped Dillard over the course of the next two days.

Dillard's suit, which is scheduled for trial in January in U.S. District Court for the Eastern District of California in Fresno, is widely seen as the clearest test yet of whether such a suit can ever be won.

"If Eddie Dillard can't get justice for what he's been through," says Robert Bastian Jr. of Los Angeles, co-counsel in the case, "then we need to ask ourselves, 'Is the system just?'"

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