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SYMPOSIUM

INDIFFERENT NO MORE: PEOPLE OF FAITH MOBILIZE TO END PRISON RAPE

Pat Nolan & Marguerite Telford***

“The opposite of compassion is not hatred, it’s indifference.”¹

I. INTRODUCTION

Polite society is uncomfortable with the subject of prison rape. Until recently, talk of prison rape was largely confined to the ribald humor of late night talk show hosts. There has been little serious public discussion despite being labeled “America’s most ‘open’ secret.”² Yet in 2003 President Bush signed into law the Prison Rape Elimination Act,³ which Congress unanimously passed. This article will examine the impact of a unique coalition of civil rights groups and religious organizations that pressed prison rape onto Congress’ agenda, and the continuing role people of conscience must play if the horror of prison rape is to be eliminated from America’s prisons.

There is little doubt about the seriousness of rape in our prisons. In a study encompassing seven correctional facilities located in four Midwestern states, thirteen percent of the inmates reported being raped during their incarceration, while another

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1. HUMAN RIGHTS WATCH, NO ESCAPE: MALE RAPE IN U.S. PRISONS (2001), available at <http://www.hrw.org/reports/2001/prison/report1.html> (quoting an anonymous inmate victim of sexual assault).

2. Cheryl Bell et al., *Rape and Sexual Misconduct in the Prison System: Analyzing America’s Most “Open” Secret*, 18 YALE L. & POL’Y REV. 195, 195 (1999).

3. Prison Rape Elimination Act of 2003, Pub. L. No. 108–79, 117 Stat. 972 (codified as amended at 42 U.S.C. §§ 15601–15609 (2005)).

nine percent experienced some other type of sexual abuse.⁴ Similarly, a 1982 study of 200 anonymous inmates in a medium-security prison found similar results, with fourteen percent of the responding inmates claiming that they had been victims of coerced intercourse.⁵

With over 2.2 million Americans incarcerated,⁶ this high percentage of inmate rape victims translates into hundreds of thousands of lives scarred physically and emotionally. A report from Human Rights Watch estimates between 250,000 and 600,000 prisoners are raped each year.⁷ To put these figures in perspective, even the lower estimate is two and a half times greater than the 94,635 rapes that were reported in the entire country in 2004.⁸

While some prison officials dispute these high estimates of prison rape, most experts acknowledge that official reports of rape are rare because inmates fear reprisal or being labeled weak, gay or a snitch.⁹ “[A]vailable statistics must be regarded as very conservative at best since discovery and documentation of this behavior are compromised by the nature of prison conditions, inmate codes and subculture, and staff attitudes.”¹⁰

Sexual violence in prisons occurs in such epidemic numbers and has received so little attention over the years that it has become, for many, an acceptable part of prison life. “[Sexual violence] 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.”¹¹

II. PRISON RAPE IS DEVASTATING TO VICTIMS

The statistics on prison rape are inadequate measures of the harm caused by rape. Just as victims of rape in the community suffer short-term as well as long-term physical, social, and psychological harm, inmates raped in prison also endure such harm, often to a greater degree.¹² Prison rape victims may experience vaginal or rectal bleeding, soreness and bruising (and much worse in the case of violent attacks), insomnia, nausea,

4. Cindy Struckman-Johnson & David Struckman-Johnson, *Sexual Coercion Rates in Seven Midwestern Prison Facilities for Men*, 80 PRISON J. 379, 384 tbl.1 (2000) (computing overall percentages by averaging numbers reported).

5. Bell, *supra* note 2, at 198.

6. Allen J. Beck & Paige M. Harrison, PRISONERS IN 2004, 2005, at 1 (Bureau of Justice Statistics, Bulletin No. NCJ210677, Oct. 2005), available at <http://www.ojp.usdoj.gov/bjs/pub/pdf/pjim04.pdf>.

7. HUMAN RIGHTS WATCH, *supra* note 1.

8. FEDERAL BUREAU OF INVESTIGATION, UNITED STATES DEP’T OF JUSTICE, UNIFORM CRIME REPORTS: CRIME IN THE UNITED STATES—2004, at 27 (2005), available at http://www.fbi.gov/ucr/cius_04/documents/CIUS2004.pdf.

9. Struckman-Johnson, *supra* note 4, at 380.

10. Donald J. Cotton & A. Nicholas Groth, *Inmate Rape: Prevention and Intervention*, 2 J. PRISON & JAIL HEALTH 47, 48 (1982).

11. *At Risk: Sexual Abuse and Vulnerable Groups Behind Bars: Hearing Before the National Prison Rape Elimination Comm.* (Aug. 19, 2005), available at http://www.nprec.us/docs/sf_tjparsell_statement.pdf (testimony of Timothy J. Parsell) (providing a personal account as a survivor of prison sexual assaults).

12. Robert W. Dumond, *Inmate Sexual Assault: The Plague that Persists*, 80 PRISON J. 407, 409 (2000).

shock, disbelief, withdrawal, anger, shame, guilt, and humiliation.¹³ The long term psychological consequences may include post traumatic stress disorder, rape trauma syndrome, ongoing fear, nightmares, flashbacks, self-hatred, substance abuse, anxiety, depression, and suicide.¹⁴

Prison rape can be particularly vicious because of the nature of repeated abuse or gang rape.¹⁵ In addition, these symptoms may be exacerbated by the fact that most inmates have no access to psychological counseling to help them deal with the trauma.¹⁶

Marilyn Shirley is an excellent example of the lasting harm of prison rape. Mrs. Shirley, a middle-aged mother and small business owner, was convicted of a drug charge and served two-and-a-half years in a federal prison.¹⁷ She was raped by a prison guard, who was later convicted:

He then threw me against the wall, repeatedly slamming my head against it and violently raped me from behind. . . . I will never forget the smell. I can still remember him whispering in my ears during the rape, ["Do you think you're the only one? Don't even think of telling because it's your word against mine and you will lose. . . . Who do you think they'll believe, an inmate like you or a fine upstanding officer like me? Don't even try to talk.["]¹⁸

Years after the rape, Mrs. Shirley still suffers from "paralyzing panic attack[s]" and "awful nightmares."¹⁹

Similarly, T.J. Parsell, another survivor of a prison assault, said, "Being gang raped in prison has scarred me in ways that can't be seen or imagined."²⁰ Mr. Parsell was incarcerated in an adult prison when he was only seventeen for robbing a Fotomat store with a toy gun as a "stupid prank."²¹ He was gang raped his first day in prison.²² Decades after his release from prison, Mr. Parsell still cannot sleep well and is startled at slight noises.²³

The psychological and physical impact of rape goes beyond behavior changes and quality of life issues. Suicide is a very real and unfortunate result for many who suffer the trauma of rape, especially in prison where there is often no ability for the victim to escape daily contact with the predator.

13. See generally Dumond, *supra* note 12; Robert W. Dumond & Doris A. Dumond, *The Treatment of Sexual Assault Victims*, in PRISON SEX: PRACTICE AND POLICY (Christopher Hensley ed., 2002) [hereinafter Dumond & Dumond].

14. *Id.*

15. Dumond & Dumond, *supra* note 13, at 67, 71.

16. Dumond, *supra* note 12, at 410.

17. *The Cost of Victimization: Why Our Nation Must Confront Prison Rape: Hearing Before the National Prison Rape Elimination Comm.* (June 14, 2005), available at http://www.nprec.us/docs/PersonalAccounts_Shirley.pdf (testimony of Marilyn Shirley, survivor of prison sexual assault).

18. *Id.*

19. *Id.*

20. Parsell, *supra* note 11.

21. *Id.*

22. *Id.*

23. *Id.*

Rodney Hulin, who was sentenced to prison for setting a dumpster on fire in his neighborhood, is an example of this tragic consequence of prison rape.²⁴ Despite being only sixteen at the time of his crime, Rodney was sentenced to eight years in an adult prison, where he was repeatedly beaten and raped.²⁵ Rodney asked for help from prison officials using all available methods.²⁶ In a grievance letter, Rodney wrote, "I have been sexually and physically assaulted several times, by several inmates. I am afraid to go to sleep, to shower, and just about everything else. I am afraid that when I am doing these things, I might die at any minute. Please sir, help me."²⁷ Despite Rodney's pleas, no one intervened to help him.²⁸

Rodney's mother was desperate to protect her son.²⁹ She called the warden and was told that Rodney needed to grow up.³⁰ The warden said, "This happens everyday, learn to deal with it. It's no big deal."³¹ Depressed and unwilling to serve out the remainder of his sentence at the mercy of sexual predators, Rodney committed suicide.³²

Suicides of rape victims have occurred in jails and prisons across the United States. A 1994 Nebraska prison study found that "over one-third of inmates targeted for sexual abuse had thoughts of suicide after the incident."³³ One Colorado inmate suffered severe injuries from rape and sodomy and wrote, "I'm at the end of my rope . . . God has kept me alive in a place where I'd rather be dead. I think about ending this pain every day."³⁴

Suicide is not the only way prison rape can lead to death. "Kendell Spruce was raped by more than 20 assailants in one year while imprisoned in Arkansas on a fraudulent-check conviction; he ended up contracting AIDS."³⁵ For his conviction of a misdemeanor, Mr. Spruce in effect received the death penalty.³⁶ Even if victims of prison rape avoid contracting HIV, they are exposed to other communicable diseases such as tuberculosis, and hepatitis B and C.³⁷ Anne Morse writes, "In practical terms,

24. *The Prison Rape Reduction Act of 2002: Hearing Before the S. Comm. on the Judiciary*, 107th Cong. 8-9 (2002), available at <http://www.access.gpo.gov/congress/senate/pdf/107hr/87677.pdf> (testimony of Linda Bruntmyer).

25. *Id.* at 8.

26. *Id.*

27. *Id.*

28. *Id.*

29. *Id.*

30. *Id.*

31. *Id.*

32. *Id.* at 9.

33. HUMAN RIGHTS WATCH, NO ESCAPE: MALE RAPE IN U.S. PRISONS n.323 (2001), available at <http://www.hrw.org/reports/2001/prison/report6.html> (citing Cindy Struckman-Johnson et al., *Sexual Coercion Reported by Men and Women in Prison*, 33 J. SEX RES. 67, 74 (1996)).

34. Becky Beane, *Congress Passes Prison Rape Elimination Act*, PRISON FELLOWSHIP MINISTRIES, Aug. 2003, http://www.pfm.org/Content/ContentGroups/Prison_Fellowship/Publications/Jubilee1/Congress_Passes_Prison_Rape_Elimination_Act.html.

35. Vivian Berger, *Sentenced to Rape*, COUNTERPUNCH, Feb. 6, 2002, available at <http://www.ojp.usdoj.gov/reentry/learn.html>.

36. *Id.*

37. *The Prison Rape Reduction Act of 2003: Hearing on H.R. 1707 Before the Subcomm. on Crime, Terrorism, and Homeland Security of the H. Comm. on the Judiciary*, 108th Cong. (2003) [hereinafter Hall] (testimony of Frank Hall, Director, Eagle Group).

this means the punishment for stealing a bag of chips from 7-Eleven is a potential death sentence. Victor Hugo's Jean Val Jean in *Les Miserables*, who served 20 years for stealing a loaf of bread, got off easy by comparison."³⁸

III. PRISON RAPE ENDANGERS THE COMMUNITY

A prison culture that tolerates rape increases the levels of violence both inside and outside of prisons. In prisons, rape often leads to fights, homicides, insurrections, and other forms of institutional violence.³⁹ When inmates do not feel that they are being protected by the correctional officers, they often resort to violence to defend themselves from sexual predators. A nonviolent inmate is more likely to turn to violence as a solution after being sexually assaulted.⁴⁰ Many victims of prison rape become violent aggressors themselves.⁴¹ Some victims preemptively rape other prisoners to avoid being raped themselves.⁴² Some male victims of prison rape, rape other inmates to seek to regain their perceived "lost manhood."⁴³ Other victims strike back by murdering their attackers.⁴⁴

This culture of violence spills over into the community once the inmates are released. This year close to 650,000 inmates will finish their sentences and be released from America's prisons.⁴⁵ Statistics predict that an even greater number of inmates will be released next year and every year thereafter into the foreseeable future.⁴⁶ Over 1,700 offenders per day will be returning to neighborhoods across the country. Ideally, society wants these individuals to become successful citizens and good neighbors. But, if these former inmates have endured violence, abuse, and rape during their imprisonment, it is much less likely that they will become responsible, successful, and law-abiding neighbors.

Tom Cahill provides a perfect example of a prison rape that first hurts the prisoner and then impacts the community. Mr. Cahill, a journalist, photographer, and Air Force veteran, was beaten and gang raped for twenty-four hours while imprisoned for civil disobedience:

After I was released from jail, I tried to live a normal life, but the rape haunted me. I had flashbacks and nightmares. I was diagnosed with post-traumatic stress disorder. My marriage and my business failed. I have been arrested over and over again for acting out. I've had sexual problems. I've been filled with anger for nearly 40

38. Anne Morse, *Brutality Behind Bars*, WORLD MAG., Feb. 3, 2001, available at <http://www.worldmag.com/articles/4626>.

39. Hall, *supra* note 37.

40. DANIEL LOCKWOOD, PRISON SEXUAL VIOLENCE 98-101 (1980).

41. *Id.* at 100.

42. Julie Samia Mair et al., *National Challenges in Population Health: New Hope for Victims of Prison Sexual Assault*, 31 J.L. MED & ETHICS 602, 603 (2003).

43. *Prison Rape Prevention: Hearing Before the S. Comm. on the Judiciary*, 107th Cong. 4 (2002), available at <http://www.access.gpo.gov/congress/senate/pdf/107thrg/87677.pdf> (statement of Frank R. Wolf, Rep., Va.).

44. *Id.*

45. Office of Justice Programs, United States Dep't of Justice, Learn About Reentry, <http://www.reentry.gov/learn.html> (last visited July 1, 2006).

46. *Id.*

years.⁴⁷

The vast majority of those incarcerated will be coming back into society.⁴⁸ “Society is profoundly influenced by the abuses they suffer or perpetuate, the skills they pick up—whether legitimate or criminal—the diseases they contract and the treatment they receive or do not receive.”⁴⁹

It is at our peril that we ignore the plight of those who are raped while in prison. As Congressman Robert Scott (D-VA) pointed out, “[S]ociety pays dearly for ignoring prison rape. Inmates, often non-violent first time offenders, come out of a prison rape experience severely traumatized and leave prison not only more likely to commit crimes, but far more likely to commit violent crimes than when they entered.”⁵⁰

Ultimately, it is both the next victim and society who suffer from our neglecting the prisoner’s plight:

One example is the tragic story of James Byrd, the black man who was picked up by three white supremacists, beaten, chained to the back of their pickup truck and dragged for three miles to his death. One of his assailants was John William King, a burglar who had recently been released after serving a three year sentence in one of Texas’s toughest prisons.

When King arrived at the prison, a group of white supremacists reportedly conspired with the guards to place King in the “black” section of the prison. At just 140 pounds, King was unable to defend himself against a group of black prisoners who repeatedly gang-raped him. This was exactly what the white power gang wanted. Filled with hatred, King was easily recruited into their group for protection. Over the remainder of his sentence, they filled King’s head full of hatred for blacks. When he was released, John King unleashed that pent-up hatred on James Byrd. The gang-rapes he endured in prison are no excuse for his murder of James Byrd, but they certainly help us understand what could lead him to hate so much.⁵¹

IV. PRISON RAPE THREATENS PUBLIC HEALTH

The high rates of communicable diseases in prison eventually spill over into our communities as prisoners are released and return to their wives and husbands,

47. *At Risk: Sexual Abuse and Vulnerable Groups Behind Bars: Hearing Before the National Prison Rape Elimination Comm.* (2005), available at http://www.nprec.us/docs/PersonalAccounts_Cahill.pdf [hereinafter Cahill] (testimony of Tom Cahill, survivor of prison sexual assault).

48. ALAN ELSNER, *GATES OF INJUSTICE: THE CRISIS IN AMERICA’S PRISONS* 15 (Financial Times Prentice Hall 2004).

49. *Id.*

50. Press Release, Rep. Robert “Bobby” Scott, Congressman Robert “Bobby” Scott Will Attend White House Signing Ceremony (Sept. 3, 2003), available at http://www.house.gov/scott/press/release/09_03_03.html.

51. Pat Nolan, *Prison Rape—It’s No Joke; To Inmates, It’s a Matter of Life or Death*, WASH. POST, Sept. 6, 2002, at A23.

girlfriends and boyfriends, homes and neighborhoods. The National Commission on Correctional Health Care estimated the following rates of infections among released inmates:

HIV: Approximately 98,000 to 145,000 HIV-positive inmates were released from prisons and jails in 1996, which is thirteen to nineteen percent of all HIV-positive individuals in the United States.⁵²

STDs: Another 465,000 to 595,000 cases of sexually transmitted diseases (including syphilis, gonorrhea, and chlamydia) were present among releasees in 1997.⁵³

Hepatitis B: 155,000 releasees in 1996 had current or chronic hepatitis B infections, accounting for twelve to fifteen percent of all individuals in the nation with current or chronic hepatitis B.⁵⁴

Hepatitis C: 1.3 to 1.4 million releasees were infected with hepatitis C in 1997, accounting for an extremely high twenty-nine to thirty-two percent of the estimated 4.5 million people infected with hepatitis C in the United States.⁵⁵

Tuberculosis: The prevalence of tuberculosis among inmates is between four and seventeen times greater than among the total U.S. population.⁵⁶

As the danger to families and communities exposed to these diseases increases, so does the burden on our overburdened public health systems. Tom Cahill estimates that his rape during his incarceration has cost taxpayers at least \$300,000 in pension, mental health care, and hospitalization expenses.⁵⁷

V. WHY IS RAPE TOLERATED IN OUR PRISONS?

No matter how heinous the crime committed, no offender's sentence includes being raped while in the custody of the government. By its very nature, imprisonment means a loss of control over the circumstances under which inmates live. They cannot choose their neighbors (i.e., cellmates), nor arm themselves, nor take other steps to protect themselves. Because the government has total control over where and how inmates live, it is the government's duty to make sure that inmates are not harmed while in custody. Senator Jeff Sessions (R-AL), who served as a prosecutor in his positions as a

52. NATIONAL COMMISSION ON CORRECTIONAL HEALTH CARE, *THE HEALTH STATUS OF SOON-TO-BE-RELEASED INMATES: A REPORT TO CONGRESS* 17 (May 2002).

53. *Id.*

54. *Id.*

55. *Id.*

56. *Id.*

57. Cahill, *supra* note 47.

U.S. Attorney and as the Attorney General of Alabama, put it well when he stated, “[R]ape is not a part of any lawful sentence.”⁵⁸

The U.S. Supreme Court recognized the responsibility of corrections officials to prevent harm to inmates, when it held that “deliberate indifference” to prison rape violated the Constitution’s Eighth Amendment protections against cruel and unusual punishment:

The Constitution does not mandate comfortable prisons . . . but neither does it permit inhumane ones. Having incarcerated persons with demonstrated proclivities for antisocial[,] criminal, and often violent, conduct, . . . having stripped them of virtually every means of self-protection and foreclosed their access to outside aid, the government and its officials are not free to let the state of nature take its course. Prison conditions may be restrictive and even harsh . . . but gratuitously allowing the beating or rape of one prisoner by another serves no legitimate penological objective. Being violently assaulted in prison is simply not part of the penalty that criminal offenders pay for their offenses against society.⁵⁹

It is important to point out that many corrections officials take the obligation to prevent rape in their facilities very seriously. San Francisco’s Sheriff Mike Hennessey has revamped policies and redesigned facilities to make rape less likely to occur.⁶⁰ Sheriff Hennessey separates violent offenders from nonviolent offenders and, within those categories, the vulnerable offenders from the dangerous offenders.⁶¹ San Francisco does not force victims to name their attackers.⁶² Sheriff Hennessey has also designed his new jail to avoid “blind spots,” the hidden places where most assaults occur.⁶³

While the majority of correctional officers see prison rape as a serious problem,⁶⁴ others deny that it is a widespread problem.⁶⁵ Still others accept prison rape as a fact of prison life. In one Texas case, a corrections officer admitted that inmates were expected to “fight-or-submit” to sexual predators.⁶⁶ A former warden described the live and let live attitude some corrections officials harbor toward prison rape:

Oftentimes, these officials will purposefully turn their back on unspeakable acts in order to maintain peace, allowing aggressive predators to have their way. Additionally, many prison rapes involve intimidation of the weaker inmate to the

58. 148 CONG. REC. S5536 (daily ed. June 13, 2002) (statement of Sen. Sessions).

59. *Farmer v. Brennan*, 511 U.S. 825, 832–34 (1994) (citations omitted).

60. *At Risk: Sexual Abuse and Vulnerable Groups Behind Bars: Hearing Before the National Prison Rape Elimination Comm.* (Aug. 19, 2005), available at http://www.nprec.us/docs/sf_bestpractices_mhennesseystatement.pdf (testimony of Michael Hennessey, Sheriff, San Francisco County).

61. *Id.*

62. *Id.*

63. *Id.*

64. Helen M. Eigenberg, *Correctional Officers and Their Perceptions of Homosexuality, Rape, and Prostitution in Male Prisons*, 80 PRISON J. 415, 428 (2000).

65. Neely Tucker, *Reform Plan Targets Prison Rape*, WASH. POST, July 26, 2003, at A10.

66. Dick J. Reavis, *Rapes Remain Prison Reality: Victims Seek Out Solitary Confinement to Escape Abuse*, SAN ANTONIO EXPRESS-NEWS, Aug. 11, 2001, at 1B.

point where they reluctantly give consent in order to survive, but it is rape nonetheless. Therefore, many of the officials believe in managing a 1,000-person prison designed for only 500 becomes much easier and they permit it to occur as a means of prison control.⁶⁷

“When asked to comment on prison rape, Massachusetts Department of Correction spokesman Anthony Carnevale explained: ‘Well, that’s prison [. . .] I don’t know what to tell you.’”⁶⁸ When one HIV-positive Massachusetts inmate sought help from prison authorities, he was told, “Welcome to Shirley. Toughen up, punk.”⁶⁹

Other officials view prison rape as just punishment, as if inmates deserve to get raped. When asked what should be done to prevent rapes in the county jail, a county commissioner said that inmates don’t need protection.⁷⁰ Rather, the commissioner continued, “They are in jail because society needed protection from them . . . Their morals are compromised. That’s why they are in jail.”⁷¹

For some corrections officers, rape is a disciplinary tool. A veteran Louisiana corrections officer described this philosophy to a newspaper:

There are prison administrators who use inmate gangs to help manage the prison. Sex and human bodies become the coin of the realm. Is inmate ‘X’ writing letters to the editor of the local newspaper and filing lawsuits? Or perhaps he threw urine or feces on an employee? ‘Well, Joe, you and Willie and Hank work him over, but be sure you don’t break any bones and send him to the hospital. If you do a good job, I’ll see that you get the blondest boy in the next shipment.’⁷²

Similar accusations of guards facilitating rape in order to punish prisoners have been lodged against officials in California and Massachusetts.⁷³

“The government doesn’t even count prison rapes when it compiles rape statistics.”⁷⁴ This is not surprising, in light of the public’s attitude that prison rape is not necessarily bad. In fact, many view prison rape as part of the punishment. Carole Gnade, director of the Utah Chapter of the American Civil Liberties Union, related a revealing conversation to a reporter, “I remember talking to someone once about an inmate who was in [prison] for writing bad checks . . . I mentioned that the inmate could be raped in prison. So this person said, ‘Well, that’ll teach him! He won’t come

67. *The Prison Rape Reduction Act of 2002: Hearing Before the S. Comm. on the Judiciary*, 107th Cong. 10 (2002) (quoting Jack Cowley, who was a warden with the Oklahoma Correctional System for 20 years), available at <http://www.access.gpo.gov/congress/senate/pdf/107hr/87677.pdf> (testimony of Mark Earley, President and CEO, Prison Fellowship Ministries).

68. Christian Parenti, *Rape As a Disciplinary Tactic*, SALON, Aug. 23, 1999, <http://www.salon.com/news/feature/1999/08/23/prisons/print.html>.

69. *Id.*

70. Tom Bowman, *Officials Say They Can’t Stop Rapes; Inmates Don’t Need Protection*, *Commissioner Says*, PATRIOT-NEWS (Harrisburg, PA), Aug. 6, 2004, at B1.

71. *Id.*

72. Parenti, *supra* note 68.

73. *Id.*

74. Morse, *supra* note 38.

out and write bad checks again!”⁷⁵ A Boston Globe poll of Massachusetts residents in 1994 found that fifty percent agreed with the statement that “society accepts prison rape ‘as part of the price criminals pay for wrongdoing.’”⁷⁶

Nearly a century ago, Winston Churchill told the British House of Commons that:

The mood and temper of the public in regard to the treatment of crime and criminals is one of the most unfailing tests of the civilisation of any country. A calm and dispassionate recognition of the rights of the accused against the State, and even of convicted criminals against the State . . . these are the symbols which in the treatment of crime and criminals mark and measure the stored-up strength of a nation, and are the sign and proof of the living virtue in it.⁷⁷

Sadly, until recently America was failing Churchill’s test.

VI. THE PASSAGE OF THE PRISON RAPE ELIMINATION ACT

Our Nation’s record of neglect in protecting inmates from sexual predators changed in 2003 when Congress unanimously passed the Prison Rape Elimination Act of 2003, which President Bush thereafter signed into law.⁷⁸ The legislation is a dramatic reversal in the way our nation deals with prison rape; it is sign and proof of living virtue in our country. The law:

Requires an annual study of the incidence of prison rape and calls for an annual public review of prison performance in reducing prison rape.⁷⁹

Establishes a National Commission to study prison rape, report its findings to Congress and develop national standards for preventing prison rape for review by the Attorney General.⁸⁰

Creates a Review Panel on Prison Rape to hold prisons and jails accountable for reducing prison rape.⁸¹

Requires the National Institute of Corrections to train prison authorities, and creates a

75. Frank Curreri, *Inmate Rape, Sex Abuse in Utah Prisons Fail to Stir Public Outrage*, SALT LAKE TRIB., Dec.16, 2001, at A1.

76. Charles M. Sennott, *Poll Finds Wide Concern About Prison Rape; Most Favor Condoms for Inmates*, BOSTON GLOBE, May 17, 1994, at 22.

77. 6 PARL. DEB., H.C. (5th ser.) (1910) 1354.

78. Prison Rape Elimination Act of 2003, Pub. L. No. 108–79, 117 Stat. 972 (codified as amended at 42 U.S.C. §§ 15601–15609 (2005)).

79. *Id.*

80. *Id.*

81. *Id.*

national clearinghouse on prison rape.⁸²

Authorizes grants to state and local governments and prison systems to reward the prevention and punishment of rape.⁸³

The Prison Rape Elimination Act was the result of years of work by a remarkable coalition of civil rights and religious groups from across the political and theological spectrum. “Thanks to a coalition of evangelicals, left-wing prison reformers, and human rights activists, Congress is on the verge of tackling America’s most ignored crime problem, prison rape.”⁸⁴

Among the civil rights groups that actively supported the bill were the NAACP, Human Rights Watch, La Raza, the Open Society Policy Center, and Amnesty International USA.⁸⁵ Working alongside them were religious groups such as Prison Fellowship, Religious Action Center of Reformed Judaism, Focus on the Family, the Southern Baptist Convention, Union of American Hebrew Congregations, the Christian Coalition, Aleph Institute, Lutheran Office of Government Affairs, United Methodist Church, National Association of Evangelicals and the Salvation Army.⁸⁶

Led by Michael Horowitz, of the Hudson Institute, this unlikely amalgam of groups were unified by their belief in the dignity of every person and their frustration at the government turning a blind eye to prison rape.⁸⁷ The coalition recruited legislators from across the political spectrum, including Senators Jeff Sessions (R-AL) and Edward Kennedy (D-MA) and Representatives Frank Wolf (R-VA) and Robert Scott (D-VA).⁸⁸ While these leaders have vast differences in philosophy, the morality of the cause brought them together. As Rabbi David Saperstein told the Senate Judiciary Committee:

Because of the profound moral clarity of the issue, a remarkable coalition of conscience has come together in support of your legislation—Jewish, mainline Protestant, Evangelical, Unitarian, civil rights, human rights, criminal justice reform advocates, health care professionals, youth workers, liberals, conservatives, and everyone in between, because we all believe that prison rape is wrong and that we can and must do something about it.⁸⁹

82. *Id.*

83. *Id.*

84. Eli Lehrer, *Crime After Punishment*, THE WEEKLY STANDARD, Oct. 12, 2002, at 17.

85. 149 CONG. REC. S10033 (daily ed. July 28, 2003) (statement of Sen. Sessions).

86. *Id.*

87. *Id.*

88. *Id.*

89. *The Prison Rape Reduction Act of 2002: Hearing Before the S. Comm. on the Judiciary*, 107th Cong. 12 (2002), available at <http://www.access.gpo.gov/congress/senate/pdf/107hr/87677.pdf> [hereinafter Saperstein] (testimony of Rabbi David Saperstein, Director, Religious Action Center of Reform Judaism).

VII. CREATED IN THE IMAGE OF GOD

In previous generations, civil rights groups and people of faith have united to battle many social evils, such as slavery, child labor, prostitution and segregation. Like those earlier efforts, the passage of the Prison Rape Elimination Act is remarkable because it protects people who have no political clout—inmates cannot vote and they have no money to contribute to campaigns. It was not political power that convinced Congress to act; it was the compelling moral argument that prison rape offends basic human dignity.

“[W]hatever a prisoner may have done, he is still created in the image of God, a being whose dignity is to be protected,” wrote Chuck Colson, the founder of Prison Fellowship.⁹⁰ Other religious groups emphasized this same principle of *imago dei* as the moral foundation of their work to protect prisoners:

Reform Judaism: One of the Bible’s most radical innovations was to put forward the notion that human beings are created “b’tselem elohim,” “in the image of God.” The use of that divine image to describe the human state serves to raise up humankind to proclaim the infinite worth and potential of each individual person and the implications of such a concept are far-reaching and profound, imposing on individuals and societies the obligation never to stand by while others degraded, to recognize the potential in all for redemption, and to assist the most vulnerable.⁹¹

Catholic Bishops: “[E]very human person is created in the image and likeness of God and has an inviolable dignity, value, and worth regardless of race, gender, class, or other human characteristics. Therefore, both the most wounded victim and the most callous criminal retain their humanity. All are created in the image of God and possess a dignity, value, and worth that must be recognized, promoted, safe-guarded, and defended. For this reason, any system of penal justice must provide those necessities that enable inmates to live in dignity: food, clothing, shelter, personal safety, timely medical care, education, and meaningful work adequate to the conditions of human dignity.”⁹²

Southern Baptists: “The sexual brutalization of inmates exposes men and women to punishment that is not only cruel but that also severely impedes their opportunity to rehabilitate themselves to assume lives worthy of the dignity of their humanity.”⁹³

90. Charles Colson, *Jesus? Special Interest: Prison Rape & the Law*, TOWNHALL.COM, Sept. 4, 2003, <http://www.townhall.com/opinion/columns/chuckcolson/2003/09/04/168349.html>.

91. Saperstein, *supra* note 89, at 12–13.

92. CATHOLIC BISHOPS OF THE UNITED STATES, RESPONSIBILITY, REHABILITATION, AND RESTORATION: A CATHOLIC PERSPECTIVE ON CRIME AND CRIMINAL JUSTICE 21 (2000).

93. Wendy McElroy, *Confronting Prison Rape*, FOX NEWS, Sept. 16, 2003, <http://www.foxnews.com/story/0,2933,97392,00.html> (quoting Barrett Duke, Vice President, Southern Baptist Ethics and Religious Liberty Commission).

VIII. CONCLUSION: HOLDING PRISON OFFICIALS ACCOUNTABLE

The history of religious advocacy against prison rape in the United States goes back to 1826, when the Reverend Louis Dwight, the founder of the Prison Discipline Society of Boston, wrote, "Nature and humanity cry aloud for redemption from this dreadful degradation."⁹⁴ Two hundred years later, Congress acted to end prison rape.

Passing the Prison Rape Elimination Act was a considerable accomplishment. However, it will only make a difference in the lives of inmates if institutions are held accountable to protect those inmates from sexual assaults. The legislation provides mechanisms to measure the effectiveness of prisons' efforts to deal with the predators as well as victims. The commission will recommend standards for institutions and the review panel will hold the states accountable for the results.⁹⁵

These important provisions of the law will be effective only if those systems that fall short are called to task. Justice Louis Brandeis once wrote, "Sunlight is said to be the best of disinfectants; electric light the most efficient policeman."⁹⁶ Advocates for reform must shine light on the shortcomings found in prison rape programs and expose them to the public. Government officials must feel pressure to make the changes necessary to protect inmates from sexual predators. Former Senator Everett Dirksen described the mindset of political leaders when he declared, "When I feel the heat, I see the light."⁹⁷ It is up to people of conscience to generate the heat when they see injustices such as prison rape continuing.

In calling for continued action to eradicate prison rape, Chuck Colson wrote, "[B]eing a doer, and not just a hearer, of the Word can make a difference. Not just in the life of the individual believer, but in the lives of those whom Jesus called 'His brothers.'"⁹⁸ As the Catholic Bishops have written, "[S]ilence and indifference are not options for a community of faith."⁹⁹ And this, of course, is exactly what Jesus calls us to do: to care about prisoners. "I say to you, whatever you did for one of these least brothers of mine, you did for me."¹⁰⁰

94. Daniel Brook, *The Problem of Prison Rape*, LEGAL AFFAIRS, Mar.-Apr. 2004, at 29.

95. Prison Rape Elimination Act of 2003, Pub. L. No. 108-79, 117 Stat. 972 (codified as amended at 42 U.S.C. §§ 15601-15609 (2005)).

96. *Buckley v. Valeo*, 424 U.S. 1, 67 (1976) (quoting LOUIS BRANDEIS, *OTHER PEOPLE'S MONEY* 62 (1933)).

97. *WHA Turns up the Heat in 2005*, THE VALUED VOICE, Dec. 22, 2005, available at http://www.wha.org/pubArchive/valued_voice/vv12-22-05.htm.

98. Colson, *supra* note 90.

99. CATHOLIC BISHOPS OF THE UNITED STATES, *CONFRONTING A CULTURE OF VIOLENCE: A CATHOLIC FRAMEWORK FOR ACTION 22* (1994).

100. *Matthew 25:40* (New American).