

Report to the Review Panel on Prison Rape on the Bureau of Justice
Statistics Study *Sexual Victimization in State and Federal Prisons Reported by*

Inmates, 2007

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On February 2, 2008, I received an e-mail from Michael L. Alston, Attorney Advisor for the Review Panel on Prison Rape, asking me to testify before the Panel to give my opinion on the Bureau of Justice Statistics (BJS) report *Sexual Victimization in State and Federal Prisons Reported by Inmates, 2007*. I was asked to comment on the "...BJS' methodology in obtaining the data analyzed in the report, and its interpretations of it." I replied on February 3, 2008 that I would not be able to testify due to a conflict, but that I would write a report addressing the Panel's interests. I received a reply from Kathleen Severens, DOJ/ Office for Civil Rights, Review Panel on Prison Rape Liaison asking me to submit my report to her e-mail address at the U. S. Department of Justice by February 22, 2008. I am also submitting my Curriculum Vitae in case members of the Panel want to know my credentials as a corrections researcher. Briefly, I worked for the Federal Bureau of Prisons (BOP) for 22 years, primarily as a corrections researcher, but I also spent two years working in a federal prison that contained medium and maximum security inmates. I was Director of Research for the BOP for the last 14 years of my government career, and retired from the government in 2002. Since that time, I have been a criminal justice consultant and most recently finished a five year term as Visiting Scientist at the National Institute of Justice (NIJ), Office of Justice Programs, U. S. Department of Justice. During the past five years, I have followed and contributed to the prison rape research effort. I wrote a summary report while at NIJ on this research, and I was also a member of a research team at the National Academy of Public Administration which conducted a study for the Prison Rape Commission. That study covered policy and procedure that addressed the detection, reduction, and punishment of prison rape, and the relationship between surveillance, prison design, and the prevalence of sexual victimization in prison.

To write this commentary, I made a request to Allen Beck, BJS Senior Statistical Advisor, to provide me with any additional documents that he thought would give me a thorough understanding of the study methodology beyond the material noted in the BJS report itself. Dr. Beck sent me the following documents: “Research Triangle Institute, Committee for the Protection of Human Subjects, Request for Approval of Research Protocol,” “Responses to IRB Minutes from 8/7/06 Meeting,” a copy of the final survey entitled “National Inmate Survey : Year 1 Questionnaire Specifications, FINAL: 1/23/07,” and a document that was submitted to the Office of Management and Budget called the “Supporting Statement.” I also made a few follow-up inquiries to Dr. Beck by e-mail for clarification on some issues. These are noted in my report.

The BJS report is based on the National Inmate Survey (NIS) jointly developed with the Research Triangle Institute (RTI). That survey is the most comprehensive and systematic assessment of sexual victimization in prisons that has ever been conducted. Gaes and Goldberg (2004)¹ noted the limitations of prior research endeavors to estimate prison sexual victimization. These included vague or unclear question wording; lack of detail in the various types of potential sexual victimization; extremely small samples; very low response rates that raised significant questions about bias in the responses; survey methods that are not ideal to elicit responses on sensitive subjects; and long time horizons that produce errors in recall. The NIS overcomes all of these problems and many others that are important when measuring sensitive topics especially in a prison environment.

The NIS asked inmates to recall incidents within the last 12 months of their incarceration. The average recall period was 8½ months since many inmates who were surveyed had only been in prison a short time. This limited time horizon insures that inmates will not “telescope” events that happened in past years into the time frame of this study, minimizing recall error.

¹ Gaes, Gerald G. and Goldberg, Andrew L. (2004) Prison Rape: A Critical Review of the Literature, <http://www.ncjrs.gov/App/Publications/abstracts.aspx?ID=234861>

The survey questions are carefully constructed and distinguish among staff and inmate initiated acts. If inmates were of Hispanic origin and Spanish speaking a Spanish translation of the survey was available. Since a large portion of many state and federal prisons are composed of inmates whose first language is Spanish, this is necessary to achieve accurate estimates of victimization². The language used to gauge nonconsensual sex is raw but precise, and leaves no doubt about the question being asked. The survey begins with broad questions on sexual activities then focuses on types of non-consensual sexual activity, a technique that improves accurate responding.

A great deal of effort was taken to insure the inmate's actual and perceived confidentiality. The audio computer-assisted self-interview (audio-CASI) procedure allows inmates to answer sensitive questions without an interviewer monitoring their responses. Research has demonstrated audio-CASI techniques are better than other survey methods to elicit responses to sensitive questions. Furthermore, since the survey questions are transmitted orally over earphones, and the alternative responses are highlighted on the screen, even inmates who have minimal literacy skills can participate in the survey.

The survey was conducted in rooms within the prison where no one could see the inmate responses or overhear the field instructor's interaction with the inmate. Once some initial questions were filled out by the field interviewer, he/she could not observe the inmate's responses to the remaining questions. Two surveys were used so that no one could be sure that any given inmate was responding to sexual victimization or an alternative survey on drug/alcohol use randomly assigned to 10 percent of the survey participants. Since a percentage of the inmates who were called to the survey room were actually not selected as study participants, prisoners who refused to participate could not be distinguished from those that were not selected for their participation. Question padding was also used so that everyone spent about the same

² In response to my inquiry, Allen Beck e-mailed me that 5 percent of the respondents used the Spanish version of the survey.

amount of time doing the survey. This prevents anyone from guessing who may have been a sexual assault victim by inferring that status from the amount of time someone spent answering the survey questions. Consent was solicited without inmate signatures, and this also enhanced confidentiality. For inmates who could not leave their cells either because they were too dangerous or because of administrative necessity, paper and pencil forms were administered to insure that those inmates who might be the most vulnerable (housed in administrative segregation) or the most aggressive (housed in disciplinary segregation) were included in the survey. According to the Beck and Harrison report only 2 percent of the participants in the survey completed a paper-and-pencil version of the survey. Field investigators got informed consent from these inmates as well, and confidentiality was enhanced by putting the completed survey into an envelope and placing a tamper proof seal across the envelope flap prior to handing it to the field investigator.

Field testing was conducted prior to the full survey administration that reassured BJS staff that inmates would not be exposed to more than minimal risk. The field test allowed for improvements in the confidentiality procedures and probably increases in the response rate, when it was decided inmates had to make their refusal in front of the field investigator, rather than their housing units where peers might apply pressure to refuse. If an inmate disclosed to a field investigator that he or she had been sexually assaulted then there were procedures in place for the inmate to file a grievance through normal administrative channels.

One of the documents mentioned that some questions in the survey would allow analysts to conduct Latent Class Modeling (LCM) and that such analysis will provide estimates of false negative i.e., inmates claiming they were *not* victimized when in fact they were, *and* false positive i.e., inmates claiming they *were* victimized when in fact they were not. Since I did not find results of this analysis in any of the documents that were provided to me, I asked Allen Beck whether these analyses had been done. In an e-mail, he replied that these models were applied to

the pre-test but did not produce much. Dr. Beck also mentioned that an in-depth analysis of the latent class models will be conducted later this year.

The statistical estimation of sexual victimization is very rigorous. The overall response rate was 72 percent which is quite good for a survey of this nature. The statisticians on this project used weights based on inmate age, gender, race, date of admission, and sentence length to insure representation of the facility population. A second adjustment was made which assigned weights from a non-responding inmate to a responding inmate to insure the victimization estimates reflect the full sample rather than only the inmates who took part in the survey. While one can never be sure how a non-responding inmate would have replied, the analysts followed well established procedures to handle unit non-response³. The sampling design was developed to give both a national estimate of prison sexual victimization and a facility level estimate. The sampling frame also insured representation of female institutions. The sample size was estimated based on a national prevalence of 4.0 percent for all forms of victimization. This was vindicated by an overall prevalence of 4.5 percent for both inmate and staff sexual misconduct including nonconsensual sexual acts and abusive sexual contacts among inmates.

The BJS report cautions against two potential competing biases in the survey responses. Victims of sexual assault are probably ashamed of their encounter and potentially concerned about possible retaliation if the perpetrator became aware the victim may divulge the perpetrator's identity. Under these circumstances, prisoner-victims may be inclined to under-report their actual victimization. According to the most recent report BJS has issued on administratively reported rates of prison sexual victimization, only 1/6th of allegations of all types of sexual victimization were substantiated⁴. Inmates may also be unwilling to report sexual victimization if they believe there is a low likelihood of having their claim substantiated. There is

³ Unit non-response refers to people in a sample who do not fill out a survey. Item non-response refers to specific survey questions that a respondent does not choose to answer.

⁴ Beck, Allen B., Harrison, Paige M., and Adams, Devon B. (2007) Sexual violence Reported by Correctional authorities, 2006. <http://www.ojp.usdoj.gov/bjs/pub/pdfsvrca06.pdf>

also the possibility that inmates would use the survey to embarrass prison officials by claiming sexual victimization when it did not actually occur. There is a rich tradition in the corrections research field that portrays an inmate subculture in opposition to the authority of prison officials. Since there is no independent assessment of the actual occurrence of a sexual assault, there is no way of knowing whether these competing biases cancel each other out, or one is more influential than the other.

The institution comparisons depicted in the BJS report are appropriately cautious based on the variability inherent in any sampling design. Some institutions which may appear to have a higher prevalence of victimization than others are actually equivalent by conventional statistical standards. These cautions are clearly outlined in the report. Nevertheless, there is clear evidence of institutional differences in the prevalence of victimization.

The last section of *Sexual Victimization in State and Federal Prisons Reported by Inmates, 2007* by Beck and Harrison notes that BJS will use facility characteristics that may be related to sexual victimization to do further analysis. These data will come from the *2005 Census of State and Federal Adult Correctional Facilities* and other items included in the 2007 NIS. The NIS has a lot of variables other than those that were used to adjust for facility and sample representativeness that can be used in further analyses. The prison level variables they will explore include prison size, crowding, types of inmates held, security level, staff-to-inmate ratios, staff characteristics, and rates of assault on inmates and staff. I am presuming some of these characteristics will be related to the levels of sexual victimization prevalence. It would be surprising if sexual victimization is not more prevalent in high security rather than low security prisons. There are ways to statistically compare the “expected” level to the actual level of victimization based on facility and inmate characteristics. Then one can rank prisons based on whether their actual victimization prevalence is higher or lower than the expected level based on inmate and facility characteristics. I inquired about the possibility of such an analysis, and Dr. Beck replied that he had hired Rick Rosenfeld, Ph. D. and D. Wayne Osgood, Ph. D. to estimate

hierarchical linear models that simultaneously take into account facility and individual inmate characteristics. Results from these models can then be used to rank prisons by comparing their actual to expected victimization probabilities. Rosenfeld and Osgood are two of the best criminologists in the field, both of whom are very sophisticated methodologists and will no doubt contribute to a comprehensive report when these models have been estimated.

It is my opinion these kinds of models give a more accurate picture of the relative ranking of prisons. In work I have done in measuring prison performance⁵ using serious misconduct and other factors as performance measures, the rankings can change once the analyst takes into account the characteristics of the inmates and facilities. These analyses must also be guided by statistical procedures that use confidence intervals around the prevalence estimates as was done in the current BJS report. I would also consider ranking prisons only within security level. I know this presents a problem because not every system rates the security level of its institutions in the same way. But it does not make sense to compare a minimum security facility to a maximum security facility since the latter is composed of prisoners with more violent and aggressive predilections. My recommendations are not meant in any way to undermine the veracity or credibility of the current BJS report.

The work conducted by the Bureau of Justice Statistics is the first comprehensive and scientifically rigorous investigation of prison sexual victimization in American prisons. While there will be challenges to the validity of the findings because there is no independent assessment of the actual event, I consider it a valid tool to rank prisons and hold administrators accountable.

⁵ Gaes, Gerald G., Camp, Scott D., Nelson, Julianne, and Saylor, William, G. (2004) *Measuring Prison Performance: Government Privatization and Accountability*, AltaMira Press.