

**Testimony of Garrett Cunningham about the Prison Litigation Reform Act
before the House Judiciary Committee's Subcommittee on Crime, Terrorism,
and Homeland Security
November 8, 2007**

Good afternoon ladies and gentlemen: I would like to thank Chairman Scott and Representative Forbes for holding this hearing about the harmful impact of the Prison Litigation Reform Act. My name is Garrett Cunningham, and as a former prisoner within the Texas Department of Criminal Justice, and a victim of prison violence and abuse, I have firsthand experience with the harmful effects of the PLRA.

In 2000, I was housed at the Luther Unit in Navasota, Texas. While at the Luther Unit, I worked in the prison's 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 as 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 about my problems with Officer Chaney, but in March 2000, I finally went to the unit's psychologist and told him about the touching and crude comments. He asked me if I thought it was an accident and I told him that it could not be because it happened all the time. He advised me to stay away from Officer Chaney.

The prison psychologist's advice did nothing to prevent the continuing sexual harassment, so a month later I decided to go to the prison's 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 2000. On that day, I had just finished my job at the prison's laundry and began walking to the back of the room in order to take a shower. Suddenly, Chaney shoved me, knocking me off balance. I screamed and struggled to get him off me, but he was too big. Officer Chaney weighed about 300 pounds. I am 5 feet 6 inches tall and weigh 145 pounds.

While I struggled, Chaney handcuffed both my hands. 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 showers 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.

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 shipped to a rougher unit where I would be raped all the time by prison 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. Under the PLRA, however, I would have had to file a first prison grievance within 15 days of being raped. I had no idea, at the point, that I was even required to file a grievance in order to bring a lawsuit. Even if I had known, during those first 15 days, my only thoughts were about suicide and about how to get myself into a safe place, like protective custody, so I would not be raped again.

But, in October 2000, I was so afraid of being raped again that I told the unit's psychologist that Chaney had raped me. He moved me to another job with a different supervisor and told me that if anyone asked why my job was changed, I should say that I wanted "a change of scenery." A few days later, I was given a new position in the laundry, 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 inappropriate 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. Internal Affairs failed to take my concerns seriously until I contacted the ACLU and even then, Chaney was never punished for assaulting me.

Officer Chaney went on to sexually harass and assault other prisoners. One year later, Nathan Essary began working under Chaney's supervision in the same laundry where I had previously been assigned. On several occasions, Nathan was forced to perform sex 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 samples to Chaney. Chaney finally resigned from the Luther Unit in January 2002 when he was indicted for his crimes against Nathan Essary. He was later convicted of inappropriate contact with an incarcerated person, but was never required to serve any time.

For me, I have found no justice. While I was in prison, the 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 filing grievances 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 a rougher unit where I would be guaranteed to face additional abuse. Because I didn't file a grievance with the friends of Officer Chaney within 15 days of being raped by him, I was forever barred from filing a lawsuit about it in federal court.

Many men and women in prison experience sexual abuse at the hands of officers and other prisoners but their pleas for help go unanswered by administrators and staff. 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. Because I was transferred several times to different units, when I did file grievances, the responses would not come to my new unit before the deadline passed to appeal them. Furthermore, victims of rape are usually too upset to figure out what they have to do to file a lawsuit; they are not thinking about lawsuits, they are thinking about how to get protection, since prison officials do not want to listen to them. These factors result in very low rates of filing such lawsuits, and therefore, abuse continues.

Victims of rape and abuse in prisons should not be stopped from filing lawsuits in federal court if they do not "exhaust their administrative remedies," under the PLRA. Making victims of rape and abuse report their abusers to prison officials often puts prisoners in more danger and results in a prisoners silence.

My hope is that Congress will acknowledge the realities of the prison life, which makes "exhausting administrative remedies" under the PLRA impossible at times. It is time to fix the PLRA so that prisoners can bring their constitutional claims to the federal court.

I thank you for your time and attention and look forward to your questions.