

The Washington Post

What the editorial on prison rape missed

For the second time in three months, The Post has editorialized against the Justice Department's unconscionable foot-dragging on issuing standards intended to reduce prison rape -- and for the second time The Post missed the mark ["A tolerance of rape," editorial, Aug. 30]. The United States neither lacks nor needs "standards" to prevent rape, in prisons or elsewhere. The Eighth Amendment of the Constitution and a host of laws and regulations outlaw the victimization, sexual and otherwise, of prisoners. The problem is that these laws and regulations are not enforced.

The federal judiciary has largely nullified the means prisoners might use to protect themselves. Given the judge-invented "deliberate indifference" standard and the "qualified immunity" defense as well as the stumbling blocks to valid and important prisoners' claims created by the Orwellian-named Prison Litigation Reform Act, even horrible abuse in prison is routinely un-actionable except against the perpetrator, who is typically judgment-proof as a practical matter.

The promulgation or non-promulgation of "prison rape standards" is a sadly inconsequential sideshow to the main event: providing victims of abuse with legal recourse sufficiently effective to compel changes in the cultures of the prisons and jails where they live. Provision of such recourse requires, however, responsible (and

unlikely) actions by Congress and the Supreme Court, in aid of an invisible constituency with virtually no clout and hardly any advocates.

If The Post wishes to help stop prison rape, the latter should be the subject of its editorials. Breast-beating about "standards" is beside the point.

Victor M. Glasberg, Alexandria

The writer is a lawyer who handles prison-abuse cases.

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