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Prisoners' Rights:

The ACLU's National Prison Project is the only national litigation program on behalf of prisoners. Since 1972, the NPP has represented more than 100,000 men, women and children. The NPP continues to fight unconstitutional conditions and the "lock 'em up" mentality that prevails in the legislatures. Learn more about our project and take action to protect the rights guaranteed to all Americans.

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In Legal First, Appeals Court Says Texas Prison Officials Can Be Sued for Discrimination Based on Sexual Orientation (9/9/2004)

FOR IMMEDIATE RELEASE

ACLU Hails Important Step Forward in Shocking Prison Sex Slave Case

WASHINGTON, DC- In a legal first, a unanimous federal appeals court has ruled that seven ranking Texas prison officials can be sued for damages due to discrimination based on sexual orientation, the American Civil Liberties Union announced today. The ruling by the Fifth Circuit Court of Appeals came in a lawsuit filed by the ACLU on behalf of a gay man who was repeatedly raped by prison gangs and whose pleas for help were ignored by officials.

Margaret Winter, Associate Director of the ACLU's National Prison Project and an attorney for the former prisoner, Roderick Keith Johnson, applauded the decision, which was issued late yesterday. The decision also upheld the right to proceed in the case under the Eighth Amendment's protection against cruel and unusual punishment.

"I could not be more pleased that we are one step closer to Roderick Johnson having his day in court," said Winter. "Once heard, Mr. Johnson's testimony about the horrifying abuse he endured and the prison staff's deliberate indifference to that abuse will shock Texas citizens and hopefully bring about improvements for all prisoners in similar circumstances."

For 18 months, Johnson was housed at the James A. Allred Unit in Iowa Park, Texas



Roderick Johnson, a Navy veteran serving time for a non-violent crime, has been bought and sold by gangs, raped, abused, and degraded nearly every day.

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where prison gangs bought and sold him as a sexual slave, raping, abusing, and degrading him nearly every day, the ACLU said in legal papers. Johnson filed numerous grievances, letters, and complaints with prison officials and appeared before the unit's classification committee seven separate times asking to be transferred to safe-keeping, protective custody, or another prison, but each time they refused, telling him that he must "fight or fuck." Prison officials moved Johnson out of the Allred Unit and into a wing designated for vulnerable prisoners only after the ACLU intervened on his behalf.

In its brief to the appeals court, the ACLU showed that Johnson had produced ample evidence that Texas prison officials "were well aware of the significant risk that ...[he] would be raped and that they consciously disregarded the risk, arbitrarily denying him protection." Indeed, direct evidence provided by Johnson includes statements by prison officers announcing that they were denying him protection because it was up to Johnson to fight off predators if he did not choose to sexually submit to them and that he should "choose someone to be with" if he wanted protection from rape.

In its unanimous ruling, the appeals court noted the U.S. Supreme Court's 1994 ruling that officials have a duty to protect prisoners from violence at the hands of other prisoners. "[H]aving stripped them of virtually every means to 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," wrote Justice David H. Souter in *Farmer v. Brennan*. "Being violently assaulted in prison is simply not part of the penalty that criminal offenders pay for their offenses against society."

Attorneys Winter and Craig Cowie of the National Prison Project represented Johnson in his lawsuit, *Johnson v. Johnson*, before the U.S. Court of Appeals for the 5th Circuit. The case has now been remanded to the U.S. District Court for the Northern District of Texas and the ACLU hopes to proceed to trial shortly.

The ACLU's brief from the Fifth Circuit argument is online at: [/prison/conditions/147751gl20040909.html](http://prison/conditions/147751gl20040909.html)

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