
PRISON SEX

PRACTICE AND POLICY

EDITED BY
CHRISTOPHER HENSLEY
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TRAINING STAFF ON INMATE SEXUAL ASSAULT

Robert W. Dumond and Doris A. Dumond

At the opening of the twenty-first century, the U.S. corrections system faces challenges that are unparalleled in its history. Added to the quandary is the revelation that rape in prison has become "an accepted fact of prison life" (Lewin, 2001: 1). A groundswell of concern is demanding a national response to end what the *Washington Post* (2001) has called the "cruel and usual" punishment of prison rape (A14). The *New York Times* (2001) observes that "America's two million prison inmates have been lawfully deprived of their liberty, but they have not been sentenced to physical and psychological abuse" (16). To remedy this abomination, we may need to initiate legislative, policy, and operational initiatives (Mariner, 2001). The most critical component of the solution, however, is training at all levels of the correctional hierarchy. It is to this endeavor that this chapter is devoted. Staff training is one of the most vital ingredients to promoting correctional institutional safety and security and ensuring the humane and constitutional care of inmates committed to custody (Smith, 2000).

Despite a decade of constructing correctional institutions in the 1990s, the incarcerated population continues to explode (Beck, 2000). Prison construction has simply not been able to keep pace with the burgeoning of the national inmate population (Masci, 1999). At midyear 2000, state prisons nationally were 1 to 17 percent above capacity, while federal prisons were 32 percent above their rated capacity (Beck and Karberg, 2001). Tonry and Petersilia (2000) argue that since the early 1970s, prisons have changed a great deal, including changes in inmate and staff subcultures and changes in inmate-staff interaction.

They posit that education of correctional officers needs to be augmented to effectively manage these transformations.

There are a number of reasons for these changes. Legislative and judicial policy changes since the mid-1970s have significantly lengthened the sentences of inmates (Petersilia, 1999). The resultant aging of the inmate population will further exhaust correctional assets (Champion, 2001; Tonry and Petersilia, 2000). The increased number of inmates with significant health problems, including HIV/AIDS (DeGroot, 2001; Maruschak, 1999) and mental illness (Chelala, 1999; Ditton, 1999), continues to tax medical, mental health, and programmatic resources within jails and prisons nationally (McDonald, 1999). To meet the dynamic future needs of managing prisons and jails effectively, correctional administrators must have the vision to anticipate these challenges and proactively prepare for them (Stinchcomb and McCampbell, 1999).

IGNORANCE OR INDIFFERENCE AMONG CORRECTIONAL OFFICIALS?

Despite a well-documented association between homosexual behavior and inmate rape, U.S. correctional officials have manifested either ignorance, misunderstanding, or more alarmingly, deliberate indifference. In the first national study of male sexual assault in U.S. prisons, Human Rights Watch (Mariner, 2001) found that most correctional authorities deny that sexual assault is a serious problem. Conducted from 1997 through 2000, the study surveyed all fifty states' department of corrections and the Federal Bureau of Prisons to determine the reported rate of inmate sexual assault. Forty-seven corrections departments responded, but only twenty-three departments reported that they maintained separate statistical information on the number of inmate sexual assaults (Mariner, 2001). The number of inmate sexual assaults disclosed was stunningly low: Only four states, Texas, Florida, Ohio, and Illinois (ranking second, fifth, sixth, and seventh in size, respectively), and the Federal Bureau of Prisons (ranking third in size) acknowledged receiving more than fifty incidents of inmate sexual assault. Texas, with a 1999 inmate population of 146,574 inmates, revealed the largest number (237 allegations) of inmate sexual assaults for a reported rate of 162 per 100,000 inmates (Mariner, 2001: 134, 373).

What made this study especially important was the discrepancy of reported incidents with substantiated results from more recent, well-designed empirical studies concerning prison sexual assault. No state indicated a rate of sexual abuse consistent with recent, large-scale

analyses by Struckman-Johnson and her colleagues (Struckman-Johnson and Struckman-Johnson, 1999, 2000a, 2000b; Struckman-Johnson et al., 1996). These observations were also at variance with the number of sexual assaults estimated by correctional officers themselves. Eigenberg (1989) found that only 9 percent of the correctional officers in Texas believed that rape in prison was rare (with 87 percent believing it was not), and 73 percent of the officers concluded that inmates do not report such assaults to prison officials. Similar results were found in the studies of Struckman-Johnson and associates. In three Nebraska prisons, correctional officers estimated that 16 percent of the inmates had pressured or forced sexual contact, and only 29 percent of these sexually abused inmates reported their victimization (Struckman-Johnson et al., 1996). Similarly, in seven Midwestern male prison facilities, staff speculated that 14.6 percent of inmates were so abused (Struckman-Johnson and Struckman-Johnson, 2000a), with similar rates of victimized inmates officially reporting to prison authorities (Struckman-Johnson and Struckman-Johnson, 2000b).

Herein lies a major obstacle to initiating substantive change. As noted by Pappozzi and Lowenkamp (2000), even a small number of misinformed policymakers can significantly handicap efforts to improve correctional progress. As can be seen, there is currently a significant lack of direction in many state correctional departments about the importance of inmate sexual assault and affirmatively responding to the problem. Only six state correctional departments (Arkansas, Illinois, Massachusetts, New Hampshire, North Carolina, and Virginia) currently provide specialized training to correctional officers in effectively managing inmate sexual assault (Mariner, 2001).

Such a recognition is vital to developing a responsible strategy. Maghan (1997) has proffered that training cannot do what management cannot do. Essentially, correctional management must take the lead in charting the direction of training. Otherwise, it obstructs staff from adequately performing their duties. Staff development efforts must also be grounded in validated, empirical studies that are carefully developed and implemented (Pappozzi and Lowenkamp, 2000; Stinchcomb, 1995; Stinchcomb and McCampbell, 1999).

WHAT SHOULD BE INCLUDED IN CORRECTIONAL STAFF TRAINING?

Identifying what should be included in correctional staff training has been the subject of considerable debate. A number of researchers and

practitioners have advanced sound, responsible recommendations for effective training, and their proposals should be carefully reviewed (Cotton and Groth, 1982, 1984; Dumond, 1992, 2000; Eigenberg, 1989, 1994, 2000b; Lockwood, 1978, 1980a; Nacci and Kane, 1982, 1983, 1984a, 1984b).

Lockwood (1978, 1980a) examined New York State prisons and found that prison staff were aware of inmate victimization. When gangs of assailants bypassed existing security protocols and mechanisms and then subsequently physically dominated their victims, prison rapes occurred. In later analyses, Lockwood (1982) considered the use of human relations and social literacy training, guided by responsible prison staff, and provided insightful assessments of living in protective custody and characteristics of the targets of sexual aggression while incarcerated (Lockwood, 1992).

Cotton and Groth (1982) emphasized that staff must have knowledge of the incidence of sexual assault within their facilities and also information about prison sexuality, victim responses, the dynamics of inmate rape, and associated trauma. Especially helpful was their identification of a three-tiered response model of prevention, intervention, and prosecution, along with a sexual assault service delivery protocol flow chart and the San Francisco Jail sexual assault crisis intervention protocol (Cotton and Groth, 1984).

In studying federal inmates, Nacci and Kane (1983) presented two illustrative models on why inmates participate in homosexual acts and the immediate causes and effects of sexual assaults and prison aggression. In their follow-up study, Nacci and Kane (1984b) presented information that was extremely valuable to help motivate staff to deter consensual activity and protect targets of sexual aggression. In addition, they provided knowledge about the relationship of correctional officer stress and job satisfaction, and then presented crucial information on staff training, such as knowledge of aggressors' cues, target profiles, helping targets to handle pressuring, and systematically responding to suspected and actual incidents through individual and programmatic intervention. They also suggested improved inmate risk-assessment procedures, advancements in prison architecture, and the use of standardized "rape kits" to collect forensic evidence from alleged victims and assailants (Nacci and Kane, 1984a).

Eigenberg's studies (1989, 1994) of correctional officers' attitudes regarding inmate rape and sexual assault were extremely important and should be reviewed. Because correctional staff are not skilled in differentiating between consensual and nonconsensual behavior, Eigenberg

(1994) argued that staff should be trained to vigorously enforce disciplinary standards regarding all sexual activity. She further argued that staff should receive "sensitivity training" to approach and communicate with victims in a professional, compassionate manner. In recent analyses, Eigenberg (2000a, 2000b) examined the willingness of correctional officers to counter coercive and consensual sexual acts. Consistently, these officers indicated that they would respond to coercive encounters, but, in general, were less likely to respond when incidents were consensual or involved homosexuals. These findings are troubling and indicate that much work needs to be done regarding officers' perceptions and attitudes.

Dumond (1992) provided a thorough, concise examination of the issues of male sexual assault and comprehensive strategies for responding to the problem. Included was a discussion of the prison hierarchy, summary tables on the epidemiology and impact of prison sexual assault, as well as two very valuable figures illustrating the cycles of victimization in sexual assault victims. Dumond's (1992) discussion of strategies for intervention was particularly helpful in training. A more recent analysis provided a timely encapsulation of the contemporary issues, for which staff training was a critical response (Dumond, 2000). Each of the issues raised by these key researchers should be carefully considered and incorporated in the development of training curriculums for correctional staff. It is also important to note that sexual relationships occur between staff and inmates and that this issue must be addressed with correctional staff during their sexual assault training.

STAFF SEXUAL MISCONDUCT

Since 1995, there have been a number of well-documented reports of sexual misconduct being perpetrated by correctional staff on inmates under their care (Amnesty International, 1999; Burton et al., 1999; Human Rights Watch, 1996), which have raised great concerns for the safety, health, and well-being of incarcerated females. Researchers studying inmate sexual assault have found, however, that it was not just male custodial staff victimizing female inmates. In their examination of Nebraska prisons, Struckman-Johnson et al. (1996) discovered eighteen incidents of sexual assault by prison staff upon male inmates, and one incident involved prison employees in the women's prison. In their later analyses of seven Midwestern male prisons in four different state correctional departments, Struckman-Johnson and Struckman-Johnson (2000a)

found rates of sexual assaultive incidents involving staff ranging between 15 and 28 percent within five institutions for an average of 20 percent. Clearly, then, it is a problem that potentially affects all inmates.

Between 1994 and 1996, Human Rights Watch conducted an examination of five states (California, Georgia, Illinois, Michigan, and New York) and the District of Columbia and found widespread incidents of custodial sexual misconduct by both male and female correctional staff. The organization also found wholesale denial, and lack of appropriate investigative and grievance procedures, and concluded that one of the major barriers to alleviating the problem was its "invisibility . . . and hence its deniability" at the state and national level (Human Rights Watch, 1996: 5). In some cases, accused officers were put in charge of investigating themselves. Class action suits initiated in 1992 in Georgia and 1994 in the District of Columbia were seen as one of the only effective vehicles used to acknowledge and remedy the problem. Unfortunately, correctional officials were often involved in severe retaliation against women who sought such remedies, as noted by Widney-Brown (1998) regarding the Michigan Department of Corrections. She concluded, however, that staff retaliation was largely representative of other corrections departments as well.

The General Accounting Office conducted an examination of staff-on-inmate sexual misconduct in three of the largest correctional departments in the United States (California, Texas, and the Federal Bureau of Prisons ranked first through third, respectively) and the District of Columbia using official sources (Burton et al., 1999). Female inmates made a total of 506 allegations of custodial sexual misconduct, of which ninety-two (18 percent) were reported. The majority of allegations involved harassment, improper surveillance, touching, and "consensual" sex. Only the Federal Bureau of Prisons reported successful prosecution of staff involved, while the other jurisdictions cited the lack of evidence for failure to prosecute. The report highlighted inadequate policies/procedures and the lack of systematic methods for data collection and analysis and concluded that the extent of custodial sexual misconduct in the United States was unknown.

Important to the debate is the notion of consensual sex between inmates and staff. Can sexual contact between correctional staff and inmates ever be considered consensual? Because of the overwhelming power and control that staff exercise over the charges (Human Rights Watch, 1996), it is difficult to take an affirmative position. The more appropriate designation would be to utilize the terms "pseudoconsensu-

al sexual abuse" and "nonconsensual sexual abuse," employed by Calhoun (1996).

Certain groups of inmates seem to be at increased risk of custodial sexual misconduct. The young, mentally ill, inexperienced, lesbian/transgendered, addicted, and first-time offenders are at increased risk (Human Rights Watch, 1996; Smith 1998). A number of factors contribute to the problem, including the unprofessional facility environment, employee character and attitude, poor/absent policies and procedures, poor training, supervisory ignorance, and inappropriate secrecy (Calhoun, 1996; Dennis, 1999; Human Rights Watch, 1996; LIS, Inc., 1996a, 1996b; Phelps, 1999).

Additional issues complicate the eradication of this problem. Staff may have improper allegiance to other staff, be indifferent, or worse, provide tacit support for such behavior. These counterproductive attitudes are dangerous to all correctional environments and underscore a major risk to custodial sexual misconduct. All such incidents compromise the safety and security of the institution and seriously jeopardize staff morale (Dennis, 1999; Phelps, 1999).

To effectively manage this cancer, a number of proposals have been proffered. They include the development of clear policies and procedures, staff training initiatives, systematic investigative techniques, and inmate awareness programs (Dennis, 1999; Human Rights Watch, 1996; LIS, Inc., 1996a, 1996b; Phelps, 1999; Widney-Brown, 1998). Other innovations can be particularly helpful, such as the establishment of confidential hotlines to assist in the reporting of such behavior, use of the polygraph for inmates who allege staff misconduct, and having investigations conducted by independent law enforcement agencies to avoid contamination/subterfuge. Such abuses are intolerable (Dumond, 2000). Dismissal of those staff involved and their swift prosecution must also be initiated in each and every case to send a clear message to all staff that such behavior is never acceptable.

There are several resources that are worthy of note. Competent, reliable policies have been established by a number of state correctional departments. Administrators should consider those promulgated by the state of Georgia (Georgia Department of Corrections, 1994, 1996) and the Commonwealth of Massachusetts (Massachusetts Department of Corrections, 2001b). The Allegations, Investigations, and Personnel Actions System currently being tested by the Michigan Department of Corrections (2000) is another innovation that bears consideration and examination. Because staff training is a vital ingredient of this process,

the endeavors of the Virginia Department of Corrections (Hobbs et al., 1998) provide an important model to analyze.

The most comprehensive staff training initiative has been undertaken by the National Institute of Corrections (2000). This curriculum is designed to provide a multiday experience for correctional staff in order to help them understand the complexities of custodial sexual misconduct and should be considered the premier model for other training initiatives. Initial responses to the training have been very favorable, as reported by Moss (2000), which is likely to continue in the future. Problems of this magnitude cannot be ameliorated without a sincere administrative commitment to recognizing the problem and initiating substantive training.

FAILURE TO RESPOND CAN RESULT IN LIABILITY AND PENALTY

One area that actually may motivate corrections professionals to respond is the realization that failure to respond affirmatively can result in significant liability and substantial compensatory and punitive damages as a result of civil litigation. Scalia (1997) reported that the growth of the prison population between 1980 and 1996 has engendered increases in prisoners' litigation in the federal courts, both U.S. district courts (trial) and U.S. courts of appeal (appellate). More than half of the cases filed in federal courts have been for alleged civil rights violations. Ross (1997) identified that inmates may file lawsuits in federal and state courts under the Civil Rights Statute Title 42 Section 1983 for deprivation of constitutional rights. Between 1970 and 1994, 3,205 correctional liability cases were brought against jail and prison correctional officials for issues such as medical care, administrative liability, conditions of confinement, failure to protect, and cruel and unusual punishment. Increasingly, state and federal courts have held individual officers, superintendents, institutions, and correctional departments liable for compensatory and punitive damages for failing to perform the adequate care, custody, and control of inmates under their supervision.

Four cases may serve to illustrate the severity of such failures and the dramatic consequences to correctional staff, administrators, and departments that can result: (1) *Redmond v. Baxley*, (2) *Smith v. Wade*, (3) *Lamarca v. Turner*, and (4) *Mathie v. Fries*. The most recent substan-

tive case to come before the U.S. Supreme Court, *Farmer v. Brennan*, will also be examined.

Redmond v. Baxley

In this case, a correctional nurse-supervisor and the director of the Michigan Department of Corrections, though aware of the severity of the risk of sexual assault, rendered an inadequate response to an inmate so assaulted. As a result, the incarcerated victim was awarded \$130,000 in damages.

Smith v. Wade

In 1976, inmate Daniel R. Wade voluntarily checked into protective custody in the Alcoa Reformatory, a Missouri correctional facility for youthful first-time offenders, because of prior incidents of inmate violence against him. Because of disciplinary violations, Wade was transferred to administrative segregation and placed in a cell with another inmate. Later that day, a correctional officer, William H. Smith, assigned a third inmate to the cell, making no effort to determine whether another cell was available (which there was). Following the placement, Wade's two cellmates harassed, beat, and sexually assaulted him. In 1983, Wade brought suit against Smith and four other guards and correctional officials alleging that his Eighth Amendment rights had been violated because Smith knew or should have known that an assault against him was likely under the circumstances.

During the trial, the district judge entered a directed verdict for two of the defendants and instructed the jury that Wade could make out an Eighth Amendment violation only by showing "physical abuse of such base, inhumane and barbaric proportions as to shock the sensibilities." Further, because of Smith's qualified immunity as a prison guard, the judge instructed the jury that Wade could recover only if the defendants were guilty of "gross negligence" (defined as "a callous indifference or a thoughtless disregard for the consequences of one's act or failure to act") or "[e]gregious failure to protect" (defined as "a flagrant or remarkably bad failure to protect"). The jury returned verdicts for two of the three remaining defendants. It found Officer Smith liable, however, and awarded \$25,000 in compensatory damages and \$5,000 in punitive damages. The district court entered judgment on the verdict, later affirmed by the U.S. Court of Appeals and the U.S. Supreme Court (see

Smith v. Wade, 461 U.S. 30 [1983]). Officer Smith was liable for the damages for his failure to act responsibly.

Lamarca v. Turner

In another case, there were patterns of inmate sexual abuse against a number of inmates virtually ignored by prison officials. This was the situation at the Glades Correctional Institution (GCI) at Belle Glade, Florida, during the early to mid-1980s. Inmate Anthony Lamarca filed a lawsuit in 1982 alleging that he had been harassed and threatened numerous times for sexual favors by other inmates. The allegation was reviewed by U.S. magistrate Peter Nimkoff who began an investigation. A total of ten inmates were identified as having suffered various significant inmate assaults, including five inmates who were raped, usually by several inmates with knives, and the other inmates having been beaten, stabbed, or smashed (Mailander, 1990a). In 1987, U.S. District Court judge James C. Paine adopted the report prepared by Nimkoff and ordered former GCI superintendent R. V. Turner to pay eight inmates \$178,500, the highest judgment ever against a state prison warden, for deliberately ignoring the "knowledge: the indices of rape that a prudent administrator would discern" (see *Lamarca v. Turner*, 662 F. Supp 647, [S.D. Fla, 1987]).

Three years later, while conditions appeared to have been improved, Judge Paine noted that homosexual rapes were still occurring at the facility, and he ordered GCI officials to make eighteen major changes at the facility. Among these mandates was the initiation of staff training for all institutional staff. Correctional staff were to be educated about the seriousness of homosexual rape and to more effectively handle rape complaints, while the staff psychiatrist and psychologist were to be trained in rape crisis management (Mailander, 1990a, 1990b).

Mathie v. Fries

There has been increasing awareness of the problem of inmate sexual assault by correctional staff, which is certainly an area of grave concern to all correctional institutions and staff (Amnesty International 1999; Burton et al., 1999; Human Rights Watch, 1996; Mariner, 2001). Such barbaric behavior can result in extraordinary judgments, as noted in *Mathie v. Fries*.

Over a period of four months in 1990, inmate Maurice F. Mathie, then a pretrial detainee at the Suffolk County Correctional Facility in Riverhead, Long Island, was brutally and repeatedly raped by the insti-

tution's head of internal security. Sergeant Roy Fries, who had been employed since 1969, had at least one prior known incident of improper conduct with an inmate that had resulted in censure. In August 1996, federal district judge Arthur D. Spatt found that Fries "used his position of Chief of Security . . . to victimize and forcibly sodomize an inmate under his total control in an outrageous abuse of power and authority." The U.S. District Court for the Eastern District of New York awarded Mathie \$250,000 in compensatory damages and \$500,000 in punitive damages. The finding was appealed to the Federal Court of Appeals for the Second Circuit in New York, which upheld the victory but reduced the punitive damages to \$200,000. Suffolk County was correspondingly ordered to pay \$450,000 in cumulative damages to the inmate (Stop Prison Rape, 1997). It is clear that prison officials can be held accountable for the wanton brutality of staff sexual assault upon inmates and consequently pay a significant price for their behavior.

Farmer v. Brennan

The most comprehensive case to be brought before the U.S. Supreme Court was the case of a transsexual inmate, Dee Farmer, who had been beaten and raped by another inmate upon being transferred to a federal penitentiary from a federal correctional institution. Farmer argued that his transsexuality made him a clear risk for sexual assault and that federal correctional officials had shown "deliberate indifference" by keeping him in the general population. The Court ruled that prison officials have an "affirmative duty under the Constitution to provide for the safety of inmates" (Justice Blackmun, concurring opinion).

* * *

There are a number of other cases in which correctional officials have been held liable and required to pay damages. Pitts (2001) makes the following observation: Successful suits have been brought by inmates against the states of Maryland, Missouri, Arizona, New York, Wisconsin, California, and several others (258). Case awards have ranged from \$2,000 to \$1 million. Courts in various jurisdictions and at different levels are determined to punish any system or person who allows an inmate to be sexually abused.

Although Mariner (2001: 157) argues that "courts have not proven to be an effective champion of the sexually abused inmate," the preceding cases reveal that correctional officials have been and can be held accountable for their inability to act appropriately and with serious results.

CONCLUSION

This chapter has examined the range of issues related to correctional staff training regarding inmate sexual assault. Training and staff development are the cornerstones to building an effective response to this complex problem that threatens the safety and security of all correctional institutions. Only a small number of state correctional departments currently engage in staff training, which reflects a deadly malaise among correctional managers and administrators.

Failure to respond affirmatively threatens not only the safety and security of correctional institutions but also compromises staff, who may be held legally and financially accountable for failing to respond appropriately. The issue of inmate sexual assault has been studied in depth, and there are tangible clues as to who is most vulnerable. All correctional staff should correspondingly become familiar with those inmates who are most at risk.

Each member of the correctional team plays a vital role in effectively managing inmate sexual assault. Correctional staff must understand prison sexuality, must develop the proper attitude to respond effectively, and must utilize sound investigative techniques to collect, maintain, and record evidence for prosecution. Classification staff play a pivotal role in managing this problem. They can initially identify potential victims and aggressors and appropriately divert inmates to more appropriate venues. They are also crucial to responding to inmate victims if abuse does occur.

Custodial sexual misconduct is also a major threat to institutional safety and security with which all correctional staff must be aware. Ignorance, indifference, and malaise have contributed to the continuation of this problem, which must be aggressively identified, prosecuted, and eradicated. To prevent sexual violence and the possible spread of HIV/AIDS, all correctional staff must be trained to comprehend the dangers and to ensure that such behavior does not occur.

7

INMATES WITH HIV/AIDS: A GROWING CONCERN

Rosemary L. Gido

In 1996, the Joint United Nations Programme on HIV/AIDS summarized the importance of inmate health care and disease prevention by stating that "prisoners are the community. They come from the community, they return to it. Protection of prisoners is protection of our communities." The group also contended that "failure to provide [prisoners] the basic measures, such as information, education, and the means of [HIV] prevention available on the outside, violates [their] rights to health, security of person, and equality before the law." In other words, by not providing safe sex opportunities, correctional administrators have failed miserably at protecting inmates and their families from acquiring and then transmitting HIV/AIDS. In addition, especially during the 1980s, most correctional facilities failed in addressing the needs of infected inmates. Using personal experiences as the former director of the Office of Program and Policy Analysis in the New York State Commission of Correction (SCOC), I will examine the commission's inability to deal with HIV and how this has been reflective of most correctional systems.

NEW YORK: A STATE WITH LATENT INABILITIES TO DEAL WITH HIV/AIDS

On October 24, 1985, then governor of New York Mario M. Cuomo announced a comprehensive strategy and public information campaign to address the problem of AIDS—acquired immune deficiency syndrome—within the state. Recognizing the significant impact of AIDS