INEVITABLE HORRORS: SEXUAL ASSAULT IN PRISON

INTRODUCTION

Blood dripped from the ceiling. It fell in droplets from his shaking hands. The fan, now smashed, had turned from white to red. Suddenly, he took a deep breath and looked up at the officers who had just arrived. He asked one question from his bloody mask: "Does he have any diseases?" This inmate, once housed in a single cell at a solitary confinement prison, had decided to rape, then beat with a fan, his cellmate. This was a normal incident at an open population prison, where inmates were routinely celled with at least one other inmate. Violence, especially sexual assault, occurred frequently at this prison. I was transferred to this prison, Menard Correctional Center, when my previous facility closed. I had worked at Tamms Correctional Center as a correctional officer, an adult male closed super-maximum prison in Illinois. Tamms housed the most violent and troublesome inmates; when Tamms closed, these inmates were dispersed throughout Illinois and sent to adult male open maximum prisons. These inmates, who were not allowed to have any physical contact

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God."[2] Unfortunately, this researcher is not mistaken in his assumption of the incessant sexual assaults among prisoners, as has been shown evident in various studies, findings, statistics, prison sexual assault literature, and affirmed by other authorities.[3] Prison is a dangerous world, one in which violence could erupt at any moment. Numerous factors contribute to prisoner victimization: the type of prison security level; the classification of the offenders; the prison code; the prison subculture; inmate roles and behaviors; physical characteristics; sexual orientation; officer negligence; and correctional staff, supervisors, and prison officials failing to shield the prisoners from sexual assaults. From my experiences working in two prisons, my attainment of two degrees in Criminal Justice, and the research I have studied, I strongly

liability for the attacks as long as the victim can prove and establish this fact in his/her case.

B. Indifference Standard

Correctional liability has been thoroughly analyzed and extensively discussed by Darrell L. Ross. Ross explains how correctional staff can be liable under the indifference standard when they act recklessly or callously[7] to the protection and safety of those prisoners under their supervision. This indifference standard was determined in *Smith v. Wade*, where officials knew of a violent history of a prisoner, yet they ignored this knowledge and placed him with a protective custody inmate who was later raped by the violent inmate.[8] The correctional officer's mindset is crucial to determining liability as well—an officer acting recklessly and without regard for a prisoner in a prisoner sexual assault case will be found liable for punitive damages.[9]

The plaintiff may use circumstantial evidence to prove his/her case.[10] However, the burden of proof for the plaintiff is not lighter because of the resource of circumstantial evidence. How can a prisoner prove that an inmate who he has been housed with multiple times without incident is a substantial risk to his safety? Is it highly probable that the inmate will attempt to rape this inmate, even though he never tried before? As discussed in *Matthews v. Armitage*, two prisoners had coexiste Tf26.69 e 3 TD.0.9(o)-02b()3.99

refused to accept that serious risks to the plaintiff were apparent.[40] Correctional officers have a duty to protect inmates from harm, whether that harm is from deprivation of constitutional rights or actual assaults from other prisoners.[41]

In a prison, correctional staff and officials must realize the various characteristics[42] of its prisoners; the inmates are not in prison for only minor, nonviolent crimes—inmates may be rapists, murderers, drug addicts, or mentally ill.[43] Because of this knowledge, prison officials and personnel should anticipate problems and have a response to such emergencies prepared.[44] An inmate cannot leave the prison to escape abuse; the correctional personnel must protect that inmate from abuse. If officials know of or suspect abuse and fail to inquire into the facts or move the inmate into protective custody, they are setting themselves up to be found liable under the level of culpability of deliberate indifference.

Plaintiffs who have overcome dispositive pretrial motions instituted by prison officials, such as those in *Dowling v. Hannigan* and *Freeman v. Godinez*, have shown enough facts for a jury to reasonably find in their favor.[45] These plaintiffs demonstrated the officials' propensities to disregard their safety as inmates and have attested blameworthiness of these officials.[46] These officials had known of a risk of serious harm, and they were unable to succeed on their motions to end the cases because of the standard of deliberate indifference.[47] Officials must learn from their mistakes, such as doing nothing when receiving a tip from another inmate, in order to prevent future liability and to protect the lives of the inmates who they have a duty to protect from harm. Their main purpose at the institution is to protect society and the inmates from harming others or themselves. These inmates cannot fend for themselves

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inmates will rape and assault others when the opportunity presents itself. Inmates and correctional staff have both been found liable for fault by the courts; and, despite improved conditions of prisons, hiring of staff, building larger facilities, and prison officials implementing new regulations and procedures, inmate sexual assault does not stop.

The first factor to be examined is the importance of classification. The main three types of prisons and the classification of the offenders embody this vital concern to prison officials. Prisons are classified according to their security level, ranging from minimum security to maximum security,[57] in order to ensure the inmate is confined at the proper security level for his classification.[58] There are noticeable differences between each of these security types through the facility's structural aspects, specifically the housing design and perimeter security[59] as well as based on the programs offered to the prisoners[60] inside the institution. A maximum security facility would most likely have single cells for its prisoners, whereas a minimum security prison would have dormitories.[61] Minimum security facilities offer a wide range of programs because their offenders are able to move from one building to another without handcuffs and leg irons like those inmates housed at an open maximum security facility.[62]

Minimum security institutions are reserved for nonviolent offenders or those offenders who pose little risk to other offenders' safety and well-being.[63] Medium security prisons, the next security level up, tend to incarcerate more dangerous offenders, such as those who are violent and may attempt to escape; these offenders are usually sentenced to less than twelve years for their crimes.[64] The third level, maximum security, houses the most violent and troublesome offenders,[65] with most of these inmates serving life sentences. The appropriate security level should be matched with the classification of the offender in order to reduce future issues that could arise, such as a maximum security prison housing an inmate who should have been confined at a minimum security facility. Classification can reduce other issues in prison because it groups similar offenders into a facility, which can ease some of the

57. HAZEL B. KERPER & JANEEN KERPER, LEGAL RIGHTS OF THE CONVICTED 444–47 (1974).

58. *Id.*

59. CLAIR A. CRIPE, LEGAL ASPECTS OF CORRECTIONS MANAGEMENT 197 (1997).

60. *Id.*

61. *Id.*

62. *Id.*

63. RICHARD P. SEITER, CORRECTIONAL ADMINISTRATION: INTEGRATING THEORY AND PRACTICE 215 (2002).

64. *Id.* at 216.

65. *Id.* at 217.

complications that result from a mixture of different offenders with varied criminal backgrounds.

Initial classification of an inmate could determine his future of being a victim or an aggressor in the vicious cycle of inmate sexual assault. Prisoners who should be incarcerated in a maximum facility should not be placed in a minimum security facility because the risks are high that these maximum level prisoners will endanger the lives of the minimum security prisoners. Even though deference to the prison officials is a critical part of cl( )8(cl)rfo7ag chse pnmc ourtsmha5.3(ve)5.7(no)45t bgv n o-.98()13.2(cp-.98(lete)5.7(nau45t)45tnom8.5(yto t5.7(t))5.se) stu

victim."[81] These sexual attackers are typically larger than their victims, free from mental illness or disability, and heterosexual.[82] Despite the wolf being a man raping a man, his actual sexual orientation before prison will determine his likelihood of being the rapist or the inmate raped.[83] His sexual orientation, if homosexual, goes against the inmate code of manliness and will increase his risk of sexual assault.

Those inmates who usually become punks or suckers are usually young white men who are underdeveloped physically.[84] These victims were found to resemble females, and their stereotypical physical and emotional characteristics: effeminate characteristics,[85] weak, vulnerable appearances,[86] small physiques,[87] and prettiness.[88] Punks were unable to defend themselves against the wolves not only because of their physical deficiencies but also due to their mental instabilities and fears. Many victims of sexual assault suffer from some form of "depression, anxiety, or posttraumatic stress disorder"[89] or have a "mental illness"[90] that makes them easy targets of victimization behind bars. Physically, they cannot fend off a larger attacker, and mentally, they cannot avoid putting themselves at risk for assault.[91] If the inmates are homosexual or transgender, they are more susceptible;[92] and transgender inmates reported "prevalence rates of sexual assault [] at 41%, compared to 2%

services."[107] It has also been asserted that "correctional staff"[108] have sold these protective custody inmates to wolves for "sexual favors"[109] or intentionally permitting inmates into the safe harbor for the victims to be attacked. Instead of escaping the abuse in general population by voluntarily submitting oneself into protective custody, the victim could possibly endure further victimization in the supposed safe unit. Research has indicated that the relationship between the staff and the prisoners is "complex"[110] and influences the lack of reporting.[111]

Besides the fear of corruption from staff, inmates fear other inmates/staff finding out about the abuse. The convict code stresses masculinity and strength, and revealing that they have lost some of that masculinity may result in other inmates viewing them as feminine[112] and an easy target for sexual assault. These inmates are embarrassed and scared of sharing their experiences. Dominant themes among those prisoners who have suffered victimization are "embarrassment and shame."[113] In one study, the researchers found that inmates refused to report the sexual abuse they suffered due to three main reasons: "(1) embarrassment, (2) retaliation from other inmates, and (3) a fear of harassment and continued victimization from other inmates."[114] These results correspond with other studies, with the reason of embarrassment being the focus of underreporting. Because of these natural feelings and responses to such victimization, inmates endure the assaults or fight against their oppressors.

Why does such an obvious problem in the correctional world continue despite studies indicating the rampant victimization occurring in prison? One author has concluded that "most penal settings are operating well beyond their rated capacity, with problems of overcrowding, understaffing, and inadequate resources being common."[115] This author analyzed that prisons' inabilities to provide safe and secure institutions have led to the continuing assaults.[116] The officers are clearly unable to appropriately supervise the inmates because they are outnumbered and ill-equipped. Overcrowding of the prison, which means there are more inmates living in confinement than intended, implies that numerous characteristics and personalities of the prisoners are clashing with

107. Miller, *supra* note 102, at 694.
108. *Id.*
109. *Id.* at 694–95.
110. *Id.* at 695.
111. *Id.*
112. Miller, *supra* note 102, at 694.
113. *Id.* at 695.
114. *Id.* at 700.
115. Robert W. Dumond, *Inmate Sexual Assault: The Plague That Persists*, *in* CURRENT PERSPECTIVES ON SEX CRIMES 115, 115 (Ronald M. Holmes et al. eds., 2002).
116. *Id.*

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one another. At Menard, for example, there were approximately 3700 inmates but only 600 officers on all shifts total. Those 600 officers can neither watch every inmate nor can they ensure that all inmates are behaving. Further, only a fraction of those 600 officers would be on any given shift; they are spread out between three, sometimes four, shifts. Day shift may have only 100 officers on duty at a given time, yet the inmate total remains the same.

Despite the problem of staff ignorance or avoidance of sexual assault, one researcher emphasizes the importance of the physical characteristics of the inmate and how his "physical size and inexperience in hand-to-hand combat make him an easy mark"[125] for sexual abuse and victimization, as well as an inmate exuding his "overt homosexuality"[126] upon arrival to the institution. This researcher also acknowledges the major role that prison masculinities play in the likelihood of a prisoner enduring a sexual attack during his confinement.[127] Whether the cause of the prison rape resulted from overcrowding or the inmate's inability to protect himself, sexual assault rages unbridled behind prison walls. The several cases discussed above have demonstrated correctional liability for failure to protect inmates from sexual assault, illustrated examples of officer and supervisor

encourage the inmates to speak up about the assaults and aid in prevention of such assaults.

Another possible solution, which would probably not be wholly implemented due to the expensive nature of such facilities, is to house all inmates in solitary confinement. If the inmates never have physical contact, like those in closed maximum facilities, they cannot rape, molest, or assault one another. Some inmates do choose such solitary confinement, and will "mutilate themselves in order to be locked up in a psychiatric ward"[133] in order to receive a single-bed cell and segregation from open population. Other inmates will attack a correctional officer, like many of those who were incarcerated at my previous facility, Tamms, in order to obtain a transfer to a closed maximum security prison with complete segregation and single-bed cells. Some inmates take action to avoid the assaults, even though such action usually forces the inmates to lose certain privileges and statuses. Unfortunately, many prisoners do not want to lose their non-segregation privileges and endure the sexual assaults. Those who stay in general population and do not report the crimes often remain the wolves' sexual slaves until they leave prison, maiming them physically and mentally.

B. Importance of Solitary Confinement

Solitary confinement is, despite its expensiveness, the only genuine option that can adequately prevent sexual assault. As one inmate noted, "When I was sentenced I didn't hear that part . . . that stated, ... While there, you will be beaten daily, savagely raped, and tortured mentally, to the point of contemplating suicide."[134] From my experience in working in super-maximum and maximum security prisons, inmates were only protected from rape and physical assaults while they were housed in solitary confinement. When I transferred to an open population, maximum prison, I discovered that inmates are beaten and raped daily. One article noted this sentiment exactly, stressing that the United States' prison rape rates are excessively high.[135] Further, rape is expected in prison by society, which compounds the effectiveness of prevention.[136] Inmates have a right to be free from sexual assaults, but that right is costly and often ignored because solitary confinement has such negative connotations.

A recent article that focused on the negative characteristics of solitary confinement described such confinement as "extreme social isolation" due to

133. BOWKER, *supra* note 1, at 1.

134. Philip Ellenbogen, *Beyond the Border: A Comparative Look at Prison Rape in the United States and Canada*, 42 COLUM. J.L. & SOC. PROBS. 335, 336 (2009).

135. *Id.*

136. *Id.* at 342.

the "near-total absence of external stimuli."[137] The cells that inmates are housed in during solitary confinement are described as "tiny," and inmates housed in these cells have "limited contact with other people."[138] The author's depiction of solitary confinement is bleak and scary, but it fails to take into account the non-solitary confinement prison cells' depictions. In such non-solitary conditions, inmates are housed in the same size cells as solitary confinement ones, yet they share it with another inmate. When these open population prisons go on lockdown, which is a frequent occurrence in maximum security facilities, these inmates are forced to reside in that tiny cell together for days on end. They are not allowed to leave the cell for their

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the high degree of responsibility prison officials must adopt in order to avoid liability and losing their funds.

V. CONCLUSION

Fault can be found for and against the inmates because the cause of the sexual assault is not a single reason or explanation but a complex myriad of factors. The staff could have ignored the abuse, the administrators could have failed to supervise their staff, or the prison structure itself could be outdated and too old to withstand the prison subculture. The inmates also are not innocent in these attacks either. On one side of this issue is the correctional staff who is directly responsible for the well-being and safety of the inmates. However, it is easier to stress this important statement than it is to actually perform the actions. The correctional staff in an open population cannot supervise every inmate in every room of the building. They cannot go into each bathroom stall, shower room, or abandoned attic twenty-four hours a day. Yet these officers must not deliberately or negligently allow sexual assaults to occur. They must carry out their job tasks and duties with a rational and level-headed mindset, be prepared for such victimizations, and attempt to prevent or stop the assaults.

The other side of the issue is the inmates perpetrating the assaults. The prison code emphasizes extreme displays of manliness and dominance, and sexual assault is a perfect illustration to prove their power and control in the prison subculture. The wolves will rape those they can dominate, the punks will stomach the rapes until their breaking points, and the fish will fear the wolves until they obtain their own statuses and cliques in the institution. Those inmates who take their destiny into their hands by becoming committed to a mental ward or protective custody unit can briefly escape the victimizations. The inmates' participation in this dominance cycle furthers the abuse and increases the workload for the correctional officers. They not only are protecting society from the inmates but also are attempting to protect the inmates from one another. The expected awfulness continues not only because of correctional staff failing to protect those under their supervision but also due to the fact that many of the inmates want the assaults to occur. The dominant inmates are fighting the system and the staff, and the staff is fighting these inmates for control. Only the future can indicate whether that control will ever be exclusively held by the correctional staff and administration.

Ultimately, more research needs to be conducted on the effectiveness of the PREA and on the other solutions to inmate sexual assault. The PREA has good intentions, but it cannot eradicate this major problem on its own. It needs a companion and that companion should be solitary confinement. Solitary confinement prevents the physical contact between inmates, which is a central element in inmate sexual assault. Inmates cannot rape one another if they cannot touch one another. However, solitary confinement is criticized for

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taking away physical contact, despite the importance of eliminating it in high-level security prisons. The solutions of officer training and Crisis teams can also assist the PREA, but they are not strong enough options in such a dangerous world as a maximum security prison. They can aid in staff awareness and compliance with the PREA standards, but they cannot prevent a prisoner from raping his cellmate. The only way to know for certain that an inmate is protected from sexual assault is to remove the cause of such assault—physical contact with other inmates. Until that is removed, the

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