

An Ethical Dilemma In Corrections

Albert De Amicis

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Executive Summary

The following paper addresses an ethical problem in corrections. The problem is sexual misconduct committed by male correctional officers on female prisoners. This problem has reached epidemic proportions throughout the nation. This paper will address two major reports that support the case that this problem is large in magnitude. The first report which was conducted by the General Accounting Office or (GAO) in 1999 investigated four of the following largest correctional jurisdictions: Federal Bureau of Prisons (BOP), Texas, California and the District of Columbia. This investigation spanned a four year period. During this period there were 506 allegations of sexual misconduct reported by correctional officers on prisoners. Out of those 506 allegations a total of 92 were sustained (GAO, 1999, p-1 and 9).

The second report was generated in December of 2003 by the human rights organization Stop Prison Rights (SPR). This report investigated an Ohio Reformatory for Women (ORW) with wide-spread allegations of sexual abuse on female inmates by correctional officers and other employees. These allegations were made by a former employee who worked as a prison therapist. Also, two other former employees came forward to report these allegations. One of the former employees was a former correctional officer and his wife who had also previously worked there as a prison nurse and a health care administrator (SPR, 2003 p-3).

This investigation resulted in 33 staff members in the state prison system being terminated for engaging in inappropriate sexual activity with prisoners. One correctional officer at the Franklin Pre-Release Center, which is under the authority of (ORW), was

suspended after it was revealed that a 26-year-old inmate was pregnant and that the correctional officer was the child's father (SPR p-7).

Even in my own facility from which I retired, the Allegheny County Bureau of Corrections, a major problem of sexual misconduct allegations was uncovered and our institution is currently under a Grand Jury investigation empanelled by the Allegheny County District Attorney, Mr. Steven Zappala.

This author conducted a phone interview with Captain Ronald Pofi, who is in charge of Internal Affairs at the jail. He and his unit are assisting with the district attorney's investigation. This author who conducted the interview found that the following information had been verified on June 28, 2005 by the Captain Pofi. The Grand Jury indicted twelve correctional officers and one sergeant. Some of these individuals pleaded guilty and were sentenced to county and state sentences. One officer was given probation. Other individuals still charged are pending court procedures. One officer was brought to trial and found not guilty. At this time, the investigation is still ongoing.

Lastly, this paper also makes the case of just how extensive the training is for the correctional officers. It also addresses educational background, and the college requirements that prison administrators are required to achieve before being elevated to those positions. This paper makes final suggestions by professional law-enforcement officials on controls and measures by implementing strong policies how to remedy individuals from engaging in these unlawful acts.

Introduction

Recently, I retired as Captain from the Allegheny County Bureau of Corrections, a county jail located in Pittsburgh, Pennsylvania. There I spent the last 30 years where I witnessed a renaissance of the correctional system. In the contemporary sense, the correctional setting in the United States has traveled far from the stereotypical portrait found in the old James Cagney prison movies, where officers were depicted as brutal and uneducated. Some of the terms in those days which had described the officers were “hack, bull, keeper, turn key, screw and guard,” unfortunately still sometimes used by some of the media today.

When media accounts of sexual misconducts by correctional staff on prisoners are publicized, the general public might assume this is the norm in American corrections, but in my opinion this is misleading.

ETHICS DEFINED

What is ethics? According to McCann, Roels, Stackhouse & Williams (1995):

Ethics studies the various patterns of morality that exists in the habits of persons, the fabric of communities, or the teachings of the wise and analyzes which ones ought to be followed and how we know (p.19).

Also according to McCann, Roels, Stackhouse & Williams (1995):

Individuals make decisions and seek to be more or less honorable with regard to their various relationships. Thus, one part of ethics treats the virtues, the development of character, and helps us decide the kind of people we ought to be. It is because of this

difference between personal and social ethics that we can find saints in bad situations and scoundrels in good ones (p.19).

Hands Off Doctrine

Evolution in the field of corrections has come full circle from days of “The Hands Off Doctrine” by the federal courts in the 1960’s. In those days, people believed since the nation’s early history that convicted prisoners’ rights were few and far between. If lawsuits were incurred by prisoners suing correctional systems and jails, the lawsuits were usually dropped by the judge. The judges’ rationale on “prisoners’ rights” left it up to the prison experts --- correctional administrators to define inmate rights. This correctional management approach became known as “The Hands Off Doctrine.” This courts’ policy persisted into the middle of the twentieth century. When the courts and the U.S. Congress began to confront the issues of civil rights in the late 1960’s, attempts were made to assure that African Americans and other minorities’ received the same rights and privileges as all other Americans (Sutty 1994, p-15).

My career began in the mid-1970’s when “The Hands Off Doctrine” philosophy still existed in corrections, even though the federal courts decision had started to change to “The One Hand On, One Hand Off Doctrine,” which in my estimation still exists today. Courts still continue to decide if violations of constitutional rights have occurred within the jails or prisons (“One Hand On”). However, the courts also allow the correctional administrators to remedy the situation (“One Hand Off”). If the problem(s) is not remedied, the courts make it perfectly clear that they will intervene more forcefully (Sutty 1994, p-15).

At the start of my career in 1975, it seemed that the correctional historical prospective still stagnated when it came to training and education. Seasoned administrators, management, and officers often laughed at the training/education approach as a partial solution to correctional dilemmas.. Their perception seem to be that inmates were dregs of society and the only training required of new recruits was walking through the cellblocks with a seasoned officer who dealt with the inmates on a daily basis.

Today training has assumed a far greater importance.. Many institutions basically have two types of training -- basic and in-service. The basic training hours requirement stipulates the required number of hours a recruit is required to undergo before he or she is officially allowed to perform his or her job. Prior to graduation, the recruit is often tested to achieve certification..

Following this, in-service training is a requirement of a number of training hours an officer needs to complete each subsequent year. Some in-service training is yearly or every two years. This is mandated by each state which mandates officer training. There are still some states where jail officer training is not mandated

What Training Can Cover

Highly-trained specialized units add to our professionalism. One such unit is the Correctional Emergency Response Teams or (CERT) which deals with tactical situations within the confines of the institution. CERT team members receive training in cell extractions, riot control, high risk transport, and shakedowns or searches.

Another is the Tactical Apprehension and Control Team (TACT). This team is trained in perimeters for hostage situations, protests or marches, mass arrests, riots, parades and general crowd control (Cornelius 2001, p-214-215).

Another highly-trained group is the Fire Emergency Response Team or (FERT). This team is trained to respond to fire emergencies. All these teams are vital components which allow jails and prisons to control emergencies when they arise.

In the new world corrections in the 21st century more and more correctional officers have achieved a college degree. Administrative positions now require a minimum of a bachelor's degree in the larger institutions. For the warden or superintendent's position, a master's degree is often preferred. One should not assume, however, that more education can be equated with improved ethical behavior.

The corrections profession is one of the most difficult careers in existence today. The usual day consists of dealing with some of the most difficult, violent, and recalcitrant criminals locked behind doors. Due to staff shortages in some places one correctional officer can be found working inside housing pods with 100 maximum security inmates under his or her supervision.

Whether correctional staff work in large, medium, or small in facilities, there is one common denominator. Personnel, by their position and authority, are empowered to control the environment at their correctional facility. When a staff member falls prey to an inmate who manipulated him or her into an indiscretion, this breaches the security network. This break can result in injury or death of staff/inmates/visitors, escape, and/or introduction of contraband (Cornelius 2001, p.175).

One of the major areas of ethical concern is the female population of any federal, state, or county level facility. The female population is one of the most problematic and difficult populations correctional personnel have to contend with today.

Sexual Misconduct in Prisons

In many correctional facilities across the United States, sexual misconduct committed by correctional officers and staff on prisoners frequently occurs.

A report by the General Accounting Office (GAO) titled, "Women in Prison: Sexual Misconduct by Correctional Staff," was submitted to the Honorable Eleanor Holmes Norton of the House of Representatives. This report dealt with sexual misconducts by correctional staff and was submitted in June of 1999. This report focused on four jurisdictions. These jurisdictions dealt with the largest correctional systems for women offenders: The Federal Bureau of Prisons (BOP), California Department of Corrections, Texas Department of Criminal Justice and the District of Columbia. At the end of the calendar year of 1998, three of the largest systems collectively held over one third of approximately 80,000 female prisoners. In the District of Columbia Department of Corrections, the female offenders held there totaled 320 at the year ending in 1998 (GAO, 1999, p-1).

During the 1990's, U.S. correctional jurisdictions recognized that there was a problem of staff-on-inmate sexual misconducts and this problem needed to be addressed. In April of 1999, the federal government, 41 states (including California, Texas and the District of Columbia, had passed laws that criminalized certain violations of sexual misconduct in prisons. Also mentioned by the GAO's report, these four correctional

systems that the GAO studied had or were developing policies that were specific in prohibiting staff sexual misconduct (GAO, 1999, pp 1 – 2).

Through the GAO's report, it was determined that while laws and policies were in place, it could minimize these assaults, it was also determined that they still occurred. According to the data that was collected, the report provided that three of the largest jurisdictions had made over 506 allegations of staff sexual misconduct collectively. This happened during the calendar years stemming from 1995 thru 1998. From the 506 allegations made by the female inmates, 92 (or 18per cent) were sustained. This resulted in resignations and employment terminations. The data is incomplete since two of the three jurisdictions (BOP and Texas) did not supply information on all the types of allegations. The District of Columbia, according to the report, provided data from the month beginning in December of 1995 to June of 1998. Twelve, or 11 percent, of 111 female inmate allegations were sustained and resulted in staff resignations. These disciplinary violations ranged from suspensions to employment terminations. Out of the four jurisdictions, the GAO reported that only the Bureau of Prisons had any criminal prosecutions resulting in convictions under sexual misconduct laws during the years of 1995 thru 1998. All four jurisdictions reported that they were involved in litigation civilly with at least two civil lawsuits. These two civil lawsuits were related to the staff sexual misconducts which happened during those years (GAO 1999, pp 1-2).

**Table 1: Taken from GAO Report, GAO/GGD-99-104, page-8
Staff-on-Inmate Sexual
Misconduct Allegations Reported and
Sustained at BOP, California, and Texas
Female Prisons, Calendar Years 1995 to
1998**

Calendar years 1995 to 1998				
Staff-on-inmate sexual misconduct	BOP	California	Texas	Total
Number of allegations reported	236	117	153	506
Number of allegations sustained (staff resignations, employment terminations, or other administrative sanctions)	22	22	48	92
Total allegations sustained as a percentage of allegations reported	9%	19%	31%	18%

The Federal Bureau of Prisons breakdown shows that of the 22 allegations for the years during 1995 to 1998, 18 staff resigned, 3 were employment terminations and 1 staff reassignment. As table 1 reflects, each of these allegations involved sexual abuse which is defined by the law as potentially criminal conduct. Out of these 22 allegations, the facts support that 14 allegations were sustained and resulted in criminal prosecution with convictions. Regarding the other seven cases of staff resignations, BOP officials told the GAO that six out of the seven employees resigned without an adverse action being recorded in their personnel files. The BOP also indicated that two out of the seven had elements of forced sexual contact, and the other five cases perhaps involved consensual sex. Nevertheless, it is still a criminal offense under federal law. The BOP official also noted that the BOP maintains a database of staff who have resigned while under investigation. The BOP checks their database for rehiring purposes (GAO, p-9).

In summary, the BOP provided the information which showed that in seven different BOP facilities there were allegations that male staff was having sex with an

inmate, including having sex in exchange for money. There were also allegations of sexual abuse and forced sexual assault (i.e. rape) (GAO, p-11).

BOP provided the following sentencing information for the 14 cases:

- Seven convictions resulted in sentences of incarceration ranging from 3 to 232 months.
- Six convictions resulted in sentences of probation ranging from 12 to 60 months, of which, one conviction also included home confinement.
- One conviction resulted in a sentence of three-months home confinement.
- In addition to the above, 10 of the 14 sentences included fines or restitution ranging from \$25 to \$5,000. Other sentencing included community service and supervised release (GAO, p-11).

Another report that GAO highlighted in this document was completed by the National Institute of Corrections or (NIC) in 1996. This report was conducted during the 1990's on sexual misconduct by correctional staff against female inmates. This problem became a matter of increased concern for many correctional agencies. This report was galvanized by two sources of pressure externally. This 1996 report stated that in the past five years, 23 departments of corrections through sexual misconduct had faced class action or individual damage suits. Most states through the legislature had passed laws either making certain types of sexual misconduct a criminal offense or the penalties of that offense was also increased (GAO 1999 p-3).

Another report was filed about an Ohio Reformatory for Women or (ORW) located in Ohio. This Ohio Reformatory for Women had a 271-member security staff that consisted of male and female correctional officers. This facility holds 1,800 inmates and,

also under the institution's umbrella of authority, there also exists two smaller prerelease centers. One is located in Cleveland, Ohio and holds 610 inmates, and the other prerelease center is located in Franklin, Ohio. This center holds 465 inmates (SPR, 2003 p-3).

This report was generated in December of 2003, by the human rights organization Stop Prison Rape or (SPR). The investigation began in December of 2002 when a former prison therapist contacted SPR and made allegations about widespread and persistent sexual abuse of female inmates by corrections officers and other employees. Shortly thereafter, two other individuals came forward. One individual was a former correctional officer who had worked there for seven years, and the other individual was his wife who also had previously worked there as a nurse and a health care administrator for nearly four years (SPR p-1).

According to these individuals, they described a climate between staff and inmates where inappropriate sexual abuse of female inmates was very common. This abuse was allegedly reported and was considered routine. The efforts to discipline or prosecute these individuals for criminal sexual behavior were rare (SPR p-1).

SPR also contacted other women who had served time in other Ohio facilities and found out that they, too, described a climate of abuse. Inmates described a range of incidents including:

- Violent encounters
- Threats and pressure to submit to sexual advances
- Trading sex for goods and favors
- Relationships that were seemingly consensual

However, under Ohio law, consenting to sex is virtually meaningless because the inmate is under near control of prison staff (SPR p1).

The allegations made by the witnesses who contacted SPR were supported by several years of media reports on the conditions that had existed in Ohio prisons.

According to SPR, the following newspapers, *Columbus Dispatch*, *Cleveland Plain Dealer*, and the *Herald-Dispatch* reported these conditions were a recurring problem. These newspapers documented a recurring problem of sexual misconduct and sexual abuse behind bars throughout the state (SPR p-7).

This investigation resulted in 33 staff members in the state prison system being terminated for engaging in inappropriate sexual activity with prisoners. One correctional officer at the Franklin Pre-Release Center was suspended after it was revealed that a 26-year-old inmate was pregnant and this correctional officer was the child's father (SPR p-7).

Sexual Misconduct in Jails

Admittedly all these institutions mentioned above are federal (BOP) and state prisons, but jails are not exempt from this type of misconduct. At the Allegheny County Jail, prior to my retirement, this improper conduct was uncovered when an inmate from our facility had been transported to a local magistrate office for a hearing.

Mr. Mike Bucsko of the *Pittsburgh Post Gazette* reported that, "An Allegheny County Jail inmate was caught with drugs at District Magistrate Oscar Petite's Office. The police caught this inmate with a sock full of drugs that was left in the magistrate's bathroom. That arrest triggered an investigation, which resulted in a grand jury, which

was impaneled by District Attorney Stephen A. Zappala of the Allegheny County District Attorney's Office" (Bucsko 2004 A-1-A-6).

This one arrest launched an investigation of 24 female inmate allegations of sexual misconduct by correctional officers R. Pofi (personal communication, June 28, 2005).

During a June 28, 2005 telephone interview with Internal Affairs Division Captain Ronald Pofi revealed that some of these individuals charged with institutional sexual assault was verified. The Grand Jury indicted twelve correctional officers and one sergeant. Some of these individuals pleaded guilty and were sentenced to county and state sentences. One officer was given probation. Others individuals still charged are pending court procedures. One officer was brought to trial and found not guilty. At this time the investigation is still ongoing.

In recent years, several correctional institutions have faced a major ethical dilemma with indictments of guilty verdicts for institutional sexual assault. The majority of correctional staff in all these institutions are excellent men and women who have been tarred with guilt by association. The individuals guilty of this unethical behavior now have the status of social pariahs. These individuals used their powers to coerce and intimidate the inmates under their charge and in doing so unknowingly smeared those who work their shifts on a regular basis and followed the ethical and moral standards the community has a right to expect.

Training, Investigation, and the Ethical Process

The correction's profession must be well-trained.

In the Allegheny County Jail, prior to June/2004, training was a very important issue for all correctional personnel, labor and management alike.

The Allegheny County Jail was one of the first county correctional facilities in the state to be certified as a training academy by the Pennsylvania Department of Corrections. The training division has a basic and in-service training curriculum. All officers have to attend in-service training classes every year. Despite this curriculum, a few officers behaved inappropriately when assigned to shift work

Nationwide, other departments can experience the same ethical problems including sexual misconduct. Every institution needs a strong internal investigative body. This unit should act independently for the warden or the superintendent of the institution. First and foremost, these individuals must thoroughly investigate every new applicant applying for any position at their respective correctional facility for any type of criminal background. A set of criterion should be followed with the interview process. An individual that doesn't fit this criterion for that department should not be selected. When the employee is selected, and the training process begins, a good foundation needs to be established. This curriculum has to be strong with a set policy that will follow the correctional officer throughout his or her career.

For example, the approach used by Sheriff Daron Hall, Davidson County, Tennessee is a one-hour long message on a zero tolerance policy when it comes to staff and inmate relationships even before that officer puts on his or her uniform and reports for their first shift (Gaseau, M. and Martin, K. (2003). pp7-8).

Andie Moss, who was a criminal justice consultant for many years for the National Institute of Corrections (NIC), spent a lot of years helping corrections agencies deal with issues of sexual misconduct.

Moss said:

Agencies should first understand what their state laws say about sexual contact between staff and inmates. All but four states have made this conduct illegal and many have made it a felony. Agencies should also have a clear policy that specifically addresses appropriate behavior as well as activity that is inappropriate, including case examples” (Gaseau, M. and Martin, K. (2003). p-5-6).

Strong policies should be developed and be enforced by each institution.

If an inmate files a complaint, internal affairs must investigate this report. This investigation is for both the inmate and the correctional officer or staff to substantiate the charge or to clear the individuals from any wrongdoing. Internal Affairs must conduct a fair and impartial investigation to get to the truth. The inmate(s) need to be placed on notice that if any false allegations exist, legal action will be taken against them.

The Sheriff’s Department from Arlington County, Virginia, also handles these complaints in a similar way.

According to Sheriff Beth Arthur from Arlington County, Virginia:

“We do the investigation for the benefit of staff. We have the responsibility to investigate, but it is also for their benefit. We also told the inmates if you bring false allegations against staff, we will bring legal action against you. We put a lot of responsibility on the inmates” (Gaseau, M. and Martin, K. (2003) P-5).

Arthur also stated:

The Arlington County Sheriff’s Department also developed an inmate brochure that outlines the expectations of staff so that inmates are aware of what staff can and cannot do. This information especially benefits female offenders, many of whom come from backgrounds where they have been dominated or

manipulated by male figures in their lives” (Gaseau, M. and Martin, K. (2003) p-5).

Some of these methods used by these correctional professionals could impact any correctional facility significantly by reducing or even by eliminating this type of behavior through a proactive approach.

Conclusion and Suggestions

Prison /Jail administrators have a formidable task ahead of them when running a facility. They have to deal with budgetary constraints. These constraints impact how they balance between operations, treatment and administration, not to even mention the problems they have when dealing with the media and the courts.

Under “The One Hand On and One Hand Off Doctrine” as mentioned earlier, the federal courts allow the leeway to operate your facility, but there is always that slippery slope looming ahead.

In a report filed by Amnesty International USA:

“The authorities of the United States have argued that anti-discriminatory employment laws in the US mean that they cannot refuse to employ male guards in women prisons. The Supreme Court has denied the claim that women prisoners should be supervised only by women officers, under Title VII of the Civil Rights Act of 1964, the Equal Employment Opportunity statute” (Amnesty International USA, 2001 p-18).

Amnesty International USA, when citing international standards Rule 53 of the Standard Minimum Rules for Treatment of Prisoners, employing men to supervise women is inconsistent. No male member of staff shall enter part of the institution set aside for women unless you are accompanied by a woman officer and women prisoners

shall be attended and supervised only by women officers (Amnesty International USA, 2001 p-17).

When you have a cross-gendered facility which consists of female and male correctional officers with a female inmate population, this presents an elementary problem when a male correctional officer is assigned to work female housing pods alone.. He is placed in a precarious position. Since the ruling of the U. S. Supreme Court is absolute, there are controls and measures that administrators need to implement to protect the officers from inmate manipulation. Security cameras with video recording capabilities should be placed in the female housing area. This serves a two-fold purpose,

1. It protects the officer from any untrue allegations.
2. It serves to deter any unethical individual from engaging in any sexual misconduct in fear of being detected by the camera.

Male officers, when alone on a unit, need to perform one of their duties which consists of conducting counts and security checks by observing the female inmate when she is secured in her cell. This opens the male officers up to all kind of accusations which can be false and subject them to an investigations. The use of cameras is vital, especially during the 2nd and 3rd shifts. This places a safeguard against manipulative inmates who could ruin the officer's reputation with his fellow officers and his standing in the community. Those who worked or are still working in corrections understand that prisons/jails are rumor mills and accusations of this kind can be devastating. .

All properly trained correctional staff know that inmates can be manipulative whether male or female. Supervisors should always instruct subordinates to protect themselves when entering female housing pods by announcing their presence. This gives

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the inmates a warning that there is a male on the floor and serves as a safeguard for both the officer and women inmates.

Another protective measure when escorting a female inmate is to have a witness accompany the officer and prisoner to their destination. Thus, correctional officers and staff can avoid the traps manipulative inmates might attempt to set.

Bottom Line: Corrections is a tough and challenging career, but ethical standards must be upheld despite the difficult circumstances in which correctional staff can find themselves.

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