



Exploding the Myths about Staff Sexual Misconduct with Inmates: Risk Assessment, Prevention and Investigation

By: Elizabeth Layman, Susan McCampbell, and Andie Moss

Included in this article is information about:

- **Defining Staff Sexual Misconduct**
- **The National Scope - Highlighting the Issue**
- **Assessing Your Agency's Vulnerability**
- **Overcoming Negative Agency Culture**
- **Human Dynamics In Jail – Establishing and Maintaining Professional Boundaries**
- **The Investigation and the Investigators**
- **Adding Value to the Agency**
- **To Learn About the Authors**

Note: The source material for this article was gathered by the Center for Innovative Public Policies, Inc. during development of a National Institute of Corrections (NIC) funded project to develop training curriculum for agency personnel charged with investigating allegations of staff sexual misconduct with inmates. This material was also presented at an NIC Workshop at the American Jail Association Conference, May 2000, in Sacramento, California. The Center for Innovative Public Policies, Inc., would like to acknowledge the work of NIC in their leadership and support of the field in this important public policy initiative. For more information about this subject, or NIC training, please see the contact information at the end of the article.

It has been sensationalized on television, in newspapers, on television news magazines, exploited in made-for-TV movies, examined and condemned by the United Nations, Human Rights Watch, the courts, and Federal and state governments. Most of us have never been involved in it. Some of us don't believe or don't want to believe that it exists. There are some that accept it as human nature, and do not recognize the dangers and ramifications of participating in it. Some say that it is only a problem in prisons, where inmates spend longer periods of time incarcerated. Some say that the short stays in jails do not allow enough time for it to develop. In its aftermath, some have committed suicide, many have been sentenced to incarceration or have lost jobs and family. Both jails and prisons have settled lawsuits, and been subjected to outside controls and monitoring for their failure to face it and address it appropriately.

Many of us don't know how it happens, and may never understand why an employee would risk everything for it. We really don't want to talk about it, but we know that if we don't, we will never prevent it or control it. We have to give it a real name, and accept that it can happen anywhere

and anytime. "It" does have a name. "It" is staff sexual misconduct.

This article overviews

- The definition of staff sexual misconduct;
- What is happening nationally that highlights staff sexual misconduct;
- Why jail administrators need to assess their agency's vulnerability;
- How to prevent staff sexual misconduct; and
- How to begin investigating allegations of staff sexual misconduct.

DEFINING STAFF SEXUAL MISCONDUCT

Finally, after decades of circling the issue, we are beginning to define staff sexual misconduct. Across the country, a generally accepted definition is emerging based on numerous court findings, and settlement agreements from some major lawsuits. That definition is: sexual misconduct is any behavior or act of any sexual nature, directed toward an inmate or detainee, by an employee, vendor, contractor, volunteer, visitor, or any other agency representative.

Sexual misconduct includes, but is not limited to, acts or attempts to commit acts such as sexual assault, sexual abuse, sexual harassment, sexual contact, obscenity, unreasonable and unnecessary invasion of privacy, behavior of sexual nature or implication, and conversations or correspondence suggesting a romantic or sexual relationship. Staff sexual misconduct is also behavior such as: sexualized name calling between inmates, and between staff and inmates, staff who "observe" inmates of the opposite sex during period of partial or total nudity for periods of time longer than necessary for facility security interests, staff having physical contact with inmates outside the need for searches and related security functions, and staff who make explicit comments about the physical appearance of an inmate.

Why should jail administrators take the time to assess the possible existence of staff sexual misconduct in their organization when they have no "incidents"? Is having no reported incidents of staff sexual misconduct a testament to a well-managed agency; or possibly symptomatic of a problem which is so underground that staff sexual misconduct is on no one's radar screen?

The reality is chilling. Staff sexual misconduct is not an issue limited to women inmates and male staff. Staff sexual misconduct exists in small jails and larger systems. Sexual misconduct is rarely rape, and most often characterized as "consensual". Misconduct occurs between inmates and volunteers, chaplains, lawyers, contractors, medical personnel, and interns. No individuals entering a jail should be considered immune from being involved in an inappropriate relationship with an inmate. The signs of staff sexual misconduct are sometimes visible to peers, supervisors and managers; but are often overlooked or misunderstood because the possibility of a colleague engaging in inappropriate behavior with an inmate is unthinkable. Yet, in the subculture of some agencies, staff sexual harassment of inmates is part of their "culture", condoned, at least tacitly, by administrators. This sexualized work environment is all some agencies know; it is the behavior modeled by supervisors and managers. Inmates and staff learn to adapt their behavior to live in

this alternative reality. ***For more information about the "red flags" indicating a potential problem, click here.***

The impact of staff sexual misconduct on an organization and its staff can be very harmful.

Staff sexual misconduct:

- ***Jeopardizes facility security;***
- ***Is illegal by statute in 44 states;***
- ***Can violate the Constitutionally guaranteed rights of inmates;***
- ***Exposes the entire agency and staff to civil and criminal liability;***
- ***Creates a hostile work environment;***
- ***Destroys trust among staff and the inmate population;***
- ***Corrupts professionals by inviting compromise and dishonesty;***
- ***Victimizes those already vulnerable [by nature of their susceptibility to inappropriate behavior, their past history of abuse, and their subordinate position to staff];***
- ***Undermines public support for jails and jail personnel; and***
- ***Diminishes legislative support for funding and reforms.***

THE NATIONAL SCOPE – HIGHLIGHTING THE ISSUE

In the past five years, several national and international reports have addressed, explored and investigated the issue of staff sexual misconduct. While the majority of these reports resulted from allegations of abuse of women in prisons and jails, staff sexual misconduct is by no means just a "women's issue". Briefly, these reports are:

(1) December 1996, Human Rights Watch organization published "All Too Familiar: Sexual Abuse of Women in U.S. State Prisons". (1) December 1996, Human Rights Watch organization published "All Too Familiar: Sexual Abuse of Women in U.S. State Prisons". This report described numerous incidents of sexual harassment, sexual abuse, sexual contact, and privacy violations of women in the six largest correctional facilities, including one combined prison/jail system. The damage to the field of corrections was significant, and many issues that corrections needed to address were brought to the forefront. [www.hrw.org] (1) December 1996, Human Rights Watch organization published "All Too Familiar: Sexual Abuse of Women in U.S. State Prisons". This report described numerous incidents of sexual harassment, sexual abuse, sexual contact, and privacy violations of women in the six largest correctional facilities, including one combined prison/jail system. The damage to the field of corrections was significant, and many issues that corrections needed to address were brought to the forefront. [www.hrw.org]

(2) In 1997, the United States Department of Justice [DOJ] filed civil rights lawsuits against two states' Departments of Corrections(2) In 1997, the United States Department of Justice [DOJ] filed civil rights lawsuits against two states' Departments of Corrections. The results of this

litigation were settlement agreements, involving extensive reorganization and revision of policies and procedures. The actions of the U.S. DOJ were based on their findings that the departments failed to sufficiently protect female inmates from sexual misconduct by staff.

(3) July 1998, "Nowhere to Hide: Retaliation against Women in Michigan State Prison", was published by Human Rights Watch. (3) July 1998, "Nowhere to Hide: Retaliation against Women in Michigan State Prison", was published by Human Rights Watch. The report examined numerous acts of retaliation against the female inmates who had filed suit or complaints against the department for acts of sexual misconduct. [www.hrw.org/reports98/women]

(4) In 1999, United Nations, "Report of the mission to the United States of America on the issue of the violence against women in state and federal prisons" [pp. 55-63]. (4) In 1999, United Nations, "Report of the mission to the United States of America on the issue of the violence against women in state and federal prisons" [pp. 55-63]. The report found that sexual misconduct by staff is "widespread" in U.S. prisons, especially when compared to systems in other industrialized countries. The report offered many recommendations, including the criminalization of sexual misconduct between staff and inmates. [www.un.org/Pubs]

(5) In June 1999, the United States Government Accounting Office published "Women in Prison: Sexual Misconduct by Correctional Staff"(5) In June 1999, the United States Government Accounting Office published "Women in Prison: Sexual Misconduct by Correctional Staff". Four jurisdictions, accounting for more than 1/3 of the total prison population, were studied. The report found that the following areas were significantly lacking attention; training, reporting methods, procedures for responding to allegations, procedures for preventing retaliation against those filing reports, conducting competent investigations, maintaining records of reports and investigations, and tracking the progress of investigations. [www.gao.gov]

Jails have not been exempt from allegations, misconduct and scrutiny. Allegations have surfaced in just about every state. Jails in many states, including in Virginia, Massachusetts, Florida, Georgia, and California have been in the news and in court to defend their agency's operations. There are no statistics on the extent of staff sexual misconduct in jails due. This may be due to the large number of local jails (over 3,200) and the diverse manner in which they are organized and managed. The experts see no reason to expect that the problem is less in jails than in prisons. In fact, some experts think the problem may be more acute. The turnover of arrestees in jails, most of who have as their only goal to get released, presents opportunities for misconduct that may go unreported. Many arrestees may believe that their treatment by staff and demands made on them are "routine." There is little opportunity for the jail to alert arrestees to protections accorded by state statute and how to report their allegations.

Clearly, the 1990's created a new awareness of the problem of sexual misconduct where an imbalance of power exists -- in the military, in religious institutions, in high schools and colleges, and in prison and jail settings. In terms of incarcerated populations, the response to the problem

has been mixed. Some jurisdictions still do not acknowledge that misconduct exists, or recognize the potentially dangerous and harmful implications of staff sexual misconduct.

At least 44 of 53 jurisdictions (the jurisdictions being the 50 states, Puerto Rico, Federal Bureau of Prisons and the District of Columbia) have passed laws criminalizing sexual relationships between staff and inmates or detainees. This number is an increase from 32 states with legislation in 1996. Even with overwhelming evidence about staff sexual misconduct, some legislatures have not fully perceived or acknowledged the problem, and efforts to pass appropriate laws have been difficult. The Association of State Correctional Administrators passed a resolution in 2000 declaring a "zero tolerance" for staff sexual misconduct.

It has been the experience in some parts of the country, that local prosecutors have not consistently pursued prosecution with corrections agencies in cases where law violations are suspected because of the alleged "consensual" nature of many of the acts. In regions of the country where jails or prisons are a main economic force, prosecutors and juries have particularly shown reluctance in condemning those who work in seemingly difficult jobs in jails and prisons.

Conversely, some jurisdictions have taken a proactive approach toward the problem of staff sexual misconduct. Establishing policies and procedures for reporting allegations, investigating allegations, protecting the parties from retaliation, training staff and inmates/detainees, and adopting policies of zero tolerance, are excellent steps to address the problem before the crisis occurs. Staff sexual misconduct is happening and will happen, in spite of the best efforts to prevent it. But understanding the nature of the problem, and establishing proactive measures will minimize the amount of events, and prepare an agency to address the issue appropriately, effectively, and with integrity and dignity.

Looking for excuses? Many agencies fear that an aggressive zero tolerance policy for staff sexual misconduct, coupled with the necessary inmate orientation and education will invite and encourage malicious and deliberately false allegations by inmates against staff with whom inmates seek to "get even". Agencies with aggressive policies report this does not occur. The real danger is to allow this fear to prevent the development and enforcement of a zero tolerance policy, or to resort to a watered down approach that can leave staff more confused and with less direction. Part of zero tolerance is setting the guidelines for consequences of making malicious or knowingly false allegations. Agencies must also be clear in distinguishing between malicious allegations, and allegations for which no corroborating evidence could be found.

So what can a jail do to protect itself and the staff from damaging and dangerous incidents of staff sexual misconduct? Prevention is not simply sending staff to training, and prevention is not telling staff to behave professionally. Prevention involves a review of policies, procedures, practices, and critiquing your agency's "culture". Prevention is a long term commitment to human rights, protection of inmates, and support of staff.

Assessing Your Agency's Vulnerability

Should jail administrators wait until they are in the news, or sued, to act? Should jails just see if the issue surfaces in a neighboring jail, or hold off acting until a court directs them to review their procedures? While these options always exist, the risks of waiting to see what the future brings are significantly higher than assessing the agency's vulnerability and acting to protect staff and inmates.

Written policy is the best offense. This wall is built with the commitment to a policy of zero tolerance for staff sexual misconduct. This commitment must be clearly role modeled by agency leadership, through public statements, and adoption of concise and descriptive policies. Without all three – public statements, policies and setting the example - staff receive mixed messages. Even model behavior is not enough, when written policy does not exist. "Hey, it's not in writing anywhere, so they can't do anything to me."

If personal integrity, facility security, and professionalism are not sufficient reasons to encourage agencies to adopt zero tolerance for staff sexual misconduct, then vicarious liability should be. Vicarious liability is created when:

Someone else (such as a supervisor) knew or should have known what was occurring or about to occur, but did nothing to correct the situation, and that lack of action was the proximate cause of subsequent harm, injury or death.

Vicarious liability results from such circumstances as: the failure to train; negligent supervision; or negligent hiring or retention. Under vicarious liability, administrators are responsible for activities within their jurisdictions. The best protection is not insurance or bonding. It is a proactive approach to any problem, rather than just a reactive response. Administrators who develop effective policy, who stay abreast of legal issues, and who treat staff and inmates with the same respect they would desire if their roles were reversed, will achieve far more results and insulation from liability than any insurance policy could hope to provide.

For administrators, attention to the following areas is critical in achieving maximum potential for preventing staff sexual misconduct:

Administrative

- ***Developing specific, clear, and concise policies – spell out in detail the definition of sexual misconduct and prohibited behaviors – leaving as little as possible to interpretation or imagination;***
- ***Assuring that anyone who has access to inmates, or who supervisors inmates, is thoroughly aware of the agency's policies, and are kept informed of any new procedures or changes – this means volunteers, contractors, interns, and professional visitors;***

- ***Assuring that hiring practices include screening of prospective employees for a past history indicating abusive behavior, sexual harassment or domestic violence;***
- ***Supporting administrative and supervisory staff who demonstrate and model behavior that supports the agency's policies and commitment;***

Training

- ***Providing pre-service and in-service training for to define sexual misconduct, how reporting will occur, the benefits to staff of a zero tolerant workplace;***

Reporting

- ***Developing an effective, fair, and confidential reporting process for both staff and inmates or detainees;***

Investigations

- ***Implementing a competent investigative function, supported by written policies and procedures which demands thorough, timely, and fair investigations into allegations of staff sexual misconduct;***
- ***Providing training for investigators to assist them in handling these sensitive and critical investigations;***
- ***Assuring the internal investigative process is clearly understood by all staff and inmates or detainees, eliminating the air of mystery and fear of the process;***

Operations

- ***Developing and supporting a disciplinary process that assures fair and appropriate actions against the guilty – inmates and staff - including those who bring malicious allegations;***
- ***Assuring that practices match policy;***

Inmate Education/Orientation

- ***Educating inmates, on an on-going basis, about what constitutes inappropriate behaviors on the part of staff, and that such behaviors will not be tolerated, how to report allegations, seek medical and mental health services, and consequences for failing to report, or making malicious allegations;***
- ***Assuring protections from retaliation against those who report allegations;***

Public Information/Media Relations

- ***Having a solid public information program prepared to handle the firestorm of attention***

that will result when allegations of staff sexual misconduct become public;

Multi-Agency Coordination

- *Coordinating with local law enforcement and prosecutors on how allegations will be handled, processed, and prosecuted;*
- *Signing memorandum of agreements with the local rape crisis center for handling the evidence collection and psychological services for inmates who bring allegations of rape;*

Improving Agency Operations

- *Using the results of investigations to critique and improve agency operations.*

Overcoming Negative Agency Culture

The difficulty for jail administrators is to gain staff "buy-in" to the zero tolerance policy. Staff must report any suspicions or inappropriate activity as part of zero tolerance. Getting staff to see "what's in it for them" is a challenge to overcome in some organizations. Staff are usually suspicious of the internal investigative process, and see few reasons to risk becoming a "snitch". The "blue wall of silence" exists in many organizations, where the agency's informal culture protects staff whose behavior is out of step with agency policy, or the law.

One jail organization overcame these obstacles when faced with public allegations of staff sexual misconduct – and the allegations were true. Their first step was to develop the agency's policy regarding zero tolerance and overcome staff resistance. The agency provided very specific training and policies on staff sexual misconduct, and clearly announced their zero tolerance policy. Newly hired staff receive training from experienced staff explaining the damage to the work environment when violations are allowed to continue. Finally, and importantly, the training covers how internal affairs investigations are conducted and why. Many staff are unaware of how many steps in most agency's internal investigations process are actually geared at protecting staff, rather than being "out to get" staff, regardless of their guilt. The Sheriff personally meets with all staff in pre-service and in-service training, to support this policy.

Human Dynamics in Jail – Establishing and Maintaining Professional Boundaries

*Understanding and appreciating the complex human dynamics between staff and inmates gives insight into the tough issue of staff sexual misconduct. The ultimate power of the corrections staff in jail can be an invitation to misconduct for some unethical staff. At the same time, inmates are more vulnerable to involvement in sexual misconduct due to their histories of physical, sexual and substance abuse. **To learn more about the past histories of abuse associated with many inmates, click here.** Compassion and understanding are necessary to manage inmates and to maintain equilibrium in the jail environment. However, compassion and understanding can also become the*

means by which inmates engage staff to do small favors, gain "trust", or learn more about the staff's personal life. Sometimes inmates are more attuned to noticing staff that are troubled than the sergeant. This complex interplay of human relations is what makes the occurrence and investigation of misconduct so difficult.

When staff fail to recognize and protect their professional boundaries with inmates, it can lead to an imbalance of power. Either the staff member or the inmate/detainee may gain more power than their position demands, leading to inappropriate relationships. Barry D. Smith, Ph.D., who has studied and written about the elements of power and authority that exist by nature in the status of correctional staff and inmates, describes this dangerous situation, "Generally what happens is that an inmate or inmates will accumulate favors until a point of no return is reached. At this point, the correctional officer is so deeply involved that the inmates have control over the officer's job." It is critical for that staff to be properly trained, have support from coworkers, supervisors and administration, and continually assure that their professional boundaries with inmates are not breached.

The best staff training programs should include at least:

- ***A thorough indoctrination of zero tolerance, enumeration of prohibited behaviors, and highlighting mandatory reporting requirements;***
- ***The investigative process;***
- ***State law, case law, court decisions;***
- ***Statistical information about inmates/detainees that demonstrate how prior history of physical and/or sexual abuse, and mental illness, affects vulnerability to misconduct***
- ***How to seek employee assistance programs;***
- ***Staff behavior that can signal a problem or potential problem;***
- ***Confidentiality during investigations; and***
- ***Discussion of the benefits of the agency or organization self-policing, and how this also benefits the line staff.***

A critical element of prevention and competent handling of staff sexual misconduct is the education of inmates/detainees. A practice that has achieved significant results in many jurisdictions is to develop specialized orientation programs for incoming inmates and detainees, as well as on-going review of these procedures and behaviors with inmates.

Inmate/detainee orientation and on-going education on sexual misconduct should include at least the following:

- ***The agency's policy of zero tolerance;***
- ***Definitions of prohibited behaviors, by both staff and inmates;***
- ***How inmates report allegations;***
- ***What protections inmates have after reporting a violation;***

- ***How to seek medical and mental health services;***
- ***A prohibition against retaliation for reporting allegations;***
- ***An explanation of the investigative process, including the policy on transfer, and movement or isolation of the parties alleged to be involved; and***
- ***Procedures for how malicious allegations will be handled.***

Retaliation is a major concern for inmates and staff who report allegations of staff sexual misconduct. Retaliation can be staff retaliating against their peers for surfacing allegations, or against inmates for reporting. Inmates can retaliate against other inmates who, by reporting allegations, have upset the balance of power in the housing unit. The agency must have clear policies against any retaliatory acts, and must address retaliation with the same timely and appropriate sanctions as allegations of misconduct. Moving staff and/or inmates/detainees may be necessary to protect them, and should be done as soon as possible. Administrators must remember that retaliation is often "invisible" or subtle and therefore must be seriously addressed if the environment is to truly be zero tolerant.

The Investigation and the Investigators

Agency investigative protocols on how to manage allegations of staff sexual misconduct must be in place ***before*** allegations arise. At a minimum, these protocols should address:

- How reports are taken;
- Preliminary inquiry procedures;
- Notifying staff and inmates of investigation, where required by state law, administrative regulations or collective bargaining agreements;
- Medical and mental health intervention, as needed, for those involved;
- Collecting and preserving evidence;
- Reassignment of staff, if necessary, during the investigation;
- Rehousing of inmates, if necessary; and
- Establishing partnerships with outside agencies, such as prosecutors, state and local law enforcement agencies, hospitals, advocacy groups, etc.

Those assigned the job of investigating allegations of staff sexual misconduct need insight and skills that allow the layers of these difficult cases to be revealed. These investigations sometimes involve human nature at its worst, interactive human dynamics, staff that have compromised their integrity, and, possibly, friends and co-workers.

The investigator must be aware of the unique dangers of those in authority having sexual relationships with inmates/detainees. The investigator must also be able to handle the implications of potentially bringing about the criminal prosecution of a fellow employee, and even someone of higher rank. ***To learn more about Garrity and Miranda warnings and how they***

relate to investigations, click here.

One aspect of internal investigations in jails is the inmate's quid pro quo. An inmate making an allegation, a victim or a witness, may demand something of the jail administrator in order to cooperate. This quid pro quo may include intervention in the inmate's current criminal case, re-housing, change in classification, special visits, or program participation. An agency may choose to have whatever policy is in its mission and best interest. It would be optimal in designing the agency's investigative protocol to give factors like quid pro quo ample thought before the issue comes up. Does the investigator have the authority to "negotiate" with an inmate? Whatever happens in each case can become agency "practice", so careful thought is needed.

The example of *quid pro quo* is just one aspect of how any jail needs to think through how zero tolerance, mandatory reporting, and investigative standards are set. Even with the best procedures, the jail administrator may have the task of overcoming the "blue wall of silence" or other staff resistance to what they may perceive as inmate friendly and anti-staff. Zero tolerance, complete, fair and thorough investigations are in the best interests of staff. Such policies contribute to a positive work environment and safety.

What happens in smaller jails, where there is not the luxury of specialized training, or the allegations have so galvanized the staff that a peer cannot manage the investigation with fairness and impartiality? The local law enforcement agency is a resource, but few sex crimes investigators will understand and appreciate the jail culture. Some police agencies may even see the sex as "consensual" with no "victim." Other law enforcement agencies may see investigations as unproductive because the prosecutor will not rush the case to a grand jury due to the nature of the crime. What options exist?

Agencies who do not have the capacity for investigations need to acknowledge this fact, and move to establish relationships with investigating agencies before allegations surface. Development of a memorandum of understanding with the local police, local prosecutor, state police, state attorney general, or even state corrections' inspectors can provide resources. Cross training with partners can help the ability of jail staff to identify the presence of a crime, and preserve the crime scene and/or evidence until the investigative partner arrives. Training with the jail staff, and familiarization with the jail culture will allow sex crime investigators who usually investigate crimes in the "free" world to appreciate the nuances, subtleties, and culture that impact investigations in the custodial setting.

The list that follows provides a number of recommendations to enhance investigators' effectiveness:

- **Clear direction and support from the agency administration;**
- **Specific training on how to conduct investigations into staff sexual misconduct;**
- **Supervision of the investigative process through meetings with commanders and**

- o **others, as necessary, to map out investigative options and plans;**
- o **Specific, written, investigative protocols for each aspect of the process;**
- o **Partnerships with other agencies, such as prosecutors, medical providers, and mental health providers who can provide advice, support and direct services during an investigation;**
- o **Cross-referenced and easily accessible database of previous investigations;**
- o **Sufficient staffing of investigative units, or other options, to ensure prompt and thorough investigations;**
- o **Understanding of the demographics of the inmate/detainee populations; and**
- o **Understanding of the culture – both staff and inmate/detainee – within the facility.**

Adding Value to the Agency

At the conclusion of an investigation into an allegation of staff sexual misconduct, the work for the jail administrator continues. Taking information gathered during the investigation and assessing what needs to be "fixed" is the next step in the process. What do the investigative results, even if the allegations were not sustained, tell the administrator? Are there training implications? Do hiring standards need revising? Do posts need to be reconfigured? Are security systems adequate?

The agency can use these results to improve and add value to the agency. If experience tells us that we are about to make the same mistake, again, then using investigative results to improve hiring, training, policies and procedures, is essential.

(1) December 1996, Human Rights Watch organization published "All Too Familiar: Sexual Abuse of Women in U.S. State Prisons". This report described numerous incidents of sexual harassment, sexual abuse, sexual contact, and privacy violations of women in the six largest correctional facilities, including one combined prison/jail system. The damage to the field of corrections was significant, and many issues that corrections needed to address were brought to the forefront. [www.hrw.org]

(2) In 1997, the United States Department of Justice [DOJ] filed civil rights lawsuits against two states' Departments of Corrections(2) In 1997, the United States Department of Justice [DOJ] filed civil rights lawsuits against two states' Departments of Corrections. The results of this litigation were settlement agreements, involving extensive reorganization and revision of policies and procedures. The actions of the U.S. DOJ were based on their findings that the departments failed to sufficiently protect female inmates from sexual misconduct by staff.

(3) July 1998, "Nowhere to Hide: Retaliation against Women in Michigan State Prison", was published by Human Rights Watch. (3) July 1998, "Nowhere to Hide: Retaliation against Women in Michigan State Prison", was published by Human Rights Watch. The report examined numerous

acts of retaliation against the female inmates who had filed suit or complaints against the department for acts of sexual misconduct. [www.hrw.org/reports98/women]

(4) In 1999, United Nations, "Report of the mission to the United States of America on the issue of the violence against women in state and federal prisons" [pp. 55-63]. (4) In 1999, United Nations, "Report of the mission to the United States of America on the issue of the violence against women in state and federal prisons" [pp. 55-63]. The report found that sexual misconduct by staff is "widespread" in U.S. prisons, especially when compared to systems in other industrialized countries. The report offered many recommendations, including the criminalization of sexual misconduct between staff and inmates. [www.un.org/Pubs]

(5) In June 1999, the United States Government Accounting Office published "Women in Prison: Sexual Misconduct by Correctional Staff"(5) In June 1999, the United States Government Accounting Office published "Women in Prison: Sexual Misconduct by Correctional Staff". Four jurisdictions, accounting for more than 1/3 of the total prison population, were studied. The report found that the following areas were significantly lacking attention; training, reporting methods, procedures for responding to allegations, procedures for preventing retaliation against those filing reports, conducting competent investigations, maintaining records of reports and investigations, and tracking the progress of investigations. [www.gao.gov]

Jails have not been exempt from allegations, misconduct and scrutiny. Allegations have surfaced in just about every state. Jails in many states, including in Virginia, Massachusetts, Florida, Georgia, and California have been in the news and in court to defend their agency's operations. There are no statistics on the extent of staff sexual misconduct in jails due. This may be due to the large number of local jails (over 3,200) and the diverse manner in which they are organized and managed. The experts see no reason to expect that the problem is less in jails than in prisons. In fact, some experts think the problem may be more acute. The turnover of arrestees in jails, most of who have as their only goal to get released, presents opportunities for misconduct that may go unreported. Many arrestees may believe that their treatment by staff and demands made on them are "routine." There is little opportunity for the jail to alert arrestees to protections accorded by state statute and how to report their allegations.

Clearly, the 1990's created a new awareness of the problem of sexual misconduct where an imbalance of power exists -- in the military, in religious institutions, in high schools and colleges, and in prison and jail settings. In terms of incarcerated populations, the response to the problem has been mixed. Some jurisdictions still do not acknowledge that misconduct exists, or recognize the potentially dangerous and harmful implications of staff sexual misconduct.

At least 44 of 53 jurisdictions (the jurisdictions being the 50 states, Puerto Rico, Federal Bureau of Prisons and the District of Columbia) have passed laws criminalizing sexual relationships between staff and inmates or detainees. This number is an increase from 32 states with legislation in 1996. Even with overwhelming evidence about staff sexual misconduct, some legislatures have not fully

perceived or acknowledged the problem, and efforts to pass appropriate laws have been difficult. The Association of State Correctional Administrators passed a resolution in 2000 declaring a "zero tolerance" for staff sexual misconduct.

It has been the experience in some parts of the country, that local prosecutors have not consistently pursued prosecution with corrections agencies in cases where law violations are suspected because of the alleged "consensual" nature of many of the acts. In regions of the country where jails or prisons are a main economic force, prosecutors and juries have particularly shown reluctance in condemning those who work in seemingly difficult jobs in jails and prisons.

Conversely, some jurisdictions have taken a proactive approach toward the problem of staff sexual misconduct. Establishing policies and procedures for reporting allegations, investigating allegations, protecting the parties from retaliation, training staff and inmates/detainees, and adopting policies of zero tolerance, are excellent steps to address the problem before the crisis occurs. Staff sexual misconduct is happening and will happen, in spite of the best efforts to prevent it. But understanding the nature of the problem, and establishing proactive measures will minimize the amount of events, and prepare an agency to address the issue appropriately, effectively, and with integrity and dignity.

Looking for excuses? Many agencies fear that an aggressive zero tolerance policy for staff sexual misconduct, coupled with the necessary inmate orientation and education will invite and encourage malicious and deliberately false allegations by inmates against staff with whom inmates seek to "get even". Agencies with aggressive policies report this does not occur. The real danger is to allow this fear to prevent the development and enforcement of a zero tolerance policy, or to resort to a watered down approach that can leave staff more confused and with less direction. Part of zero tolerance is setting the guidelines for consequences of making malicious or knowingly false allegations. Agencies must also be clear in distinguishing between malicious allegations, and allegations for which no corroborating evidence could be found.

So what can a jail do to protect itself and the staff from damaging and dangerous incidents of staff sexual misconduct? Prevention is not simply sending staff to training, and prevention is not telling staff to behave professionally. Prevention involves a review of policies, procedures, practices, and critiquing your agency's "culture". Prevention is a long term commitment to human rights, protection of inmates, and support of staff.

Assessing Your Agency's Vulnerability

Should jail administrators wait until they are in the news, or sued, to act? Should jails just see if the issue surfaces in a neighboring jail, or hold off acting until a court directs them to review their procedures? While these options always exist, the risks of waiting to see what the future brings are significantly higher than assessing the agency's vulnerability and acting to protect staff and

inmates.

Written policy is the best offense. This wall is built with the commitment to a policy of zero tolerance for staff sexual misconduct. This commitment must be clearly role modeled by agency leadership, through public statements, and adoption of concise and descriptive policies. Without all three – public statements, policies and setting the example - staff receive mixed messages. Even model behavior is not enough, when written policy does not exist. "Hey, it's not in writing anywhere, so they can't do anything to me."

If personal integrity, facility security, and professionalism are not sufficient reasons to encourage agencies to adopt zero tolerance for staff sexual misconduct, then vicarious liability should be. Vicarious liability is created when:

Someone else (such as a supervisor) knew or should have known what was occurring or about to occur, but did nothing to correct the situation, and that lack of action was the proximate cause of subsequent harm, injury or death.

Vicarious liability results from such circumstances as: the failure to train; negligent supervision; or negligent hiring or retention. Under vicarious liability, administrators are responsible for activities within their jurisdictions. The best protection is not insurance or bonding. It is a proactive approach to any problem, rather than just a reactive response. Administrators who develop effective policy, who stay abreast of legal issues, and who treat staff and inmates with the same respect they would desire if their roles were reversed, will achieve far more results and insulation from liability than any insurance policy could hope to provide.

For administrators, attention to the following areas is critical in achieving maximum potential for preventing staff sexual misconduct:

Administrative

- **Developing specific, clear, and concise policies – spell out in detail the definition of sexual misconduct and prohibited behaviors – leaving as little as possible to interpretation or imagination;**
- **Assuring that anyone who has access to inmates, or who supervises inmates, is thoroughly aware of the agency's policies, and are kept informed of any new procedures or changes – this means volunteers, contractors, interns, and professional visitors;**
- **Assuring that hiring practices include screening of prospective employees for a past history indicating abusive behavior, sexual harassment or domestic violence;**
- **Supporting administrative and supervisory staff who demonstrate and model behavior that supports the agency's policies and commitment;**

Training

- Providing pre-service and in-service training for to define sexual misconduct, how reporting will occur, the benefits to staff of a zero tolerant workplace;

Reporting

- Developing an effective, fair, and confidential reporting process for both staff and inmates or detainees;

Investigations

- Implementing a competent investigative function, supported by written policies and procedures which demands thorough, timely, and fair investigations into allegations of staff sexual misconduct;
- Providing training for investigators to assist them in handling these sensitive and critical investigations;
- Assuring the internal investigative process is clearly understood by all staff and inmates or detainees, eliminating the air of mystery and fear of the process;

Operations

- Developing and supporting a disciplinary process that assures fair and appropriate actions against the guilty – inmates and staff - including those who bring malicious allegations;
- Assuring that practices match policy;

Inmate Education/Orientation

- Educating inmates, on an on-going basis, about what constitutes inappropriate behaviors on the part of staff, and that such behaviors will not be tolerated, how to report allegations, seek medical and mental health services, and consequences for failing to report, or making malicious allegations;
- Assuring protections from retaliation against those who report allegations;

Public Information/Media Relations

- Having a solid public information program prepared to handle the firestorm of attention that will result when allegations of staff sexual misconduct become public;

Multi-Agency Coordination

- Coordinating with local law enforcement and prosecutors on how allegations will be handled, processed, and prosecuted;

- **Signing memorandum of agreements with the local rape crisis center for handling the evidence collection and psychological services for inmates who bring allegations of rape;**

Improving Agency Operations

- **Using the results of investigations to critique and improve agency operations.**

Overcoming Negative Agency Culture

The difficulty for jail administrators is to gain staff "buy-in" to the zero tolerance policy. Staff must report any suspicions or inappropriate activity as part of zero tolerance. Getting staff to see "what's in it for them" is a challenge to overcome in some organizations. Staff are usually suspicious of the internal investigative process, and see few reasons to risk becoming a "snitch". The "blue wall of silence" exists in many organizations, where the agency's informal culture protects staff whose behavior is out of step with agency policy, or the law.

One jail organization overcame these obstacles when faced with public allegations of staff sexual misconduct – and the allegations were true. Their first step was to develop the agency's policy regarding zero tolerance and overcome staff resistance. The agency provided very specific training and policies on staff sexual misconduct, and clearly announced their zero tolerance policy. Newly hired staff receive training from experienced staff explaining the damage to the work environment when violations are allowed to continue. Finally, and importantly, the training covers how internal affairs investigations are conducted and why. Many staff are unaware of how many steps in most agency's internal investigations process are actually geared at protecting staff, rather than being "out to get" staff, regardless of their guilt. The Sheriff personally meets with all staff in pre-service and in-service training, to support this policy.

Human Dynamics in Jail – Establishing and Maintaining Professional Boundaries

Understanding and appreciating the complex human dynamics between staff and inmates gives insight into the tough issue of staff sexual misconduct. The ultimate power of the corrections staff in jail can be an invitation to misconduct for some unethical staff. At the same time, inmates are more vulnerable to involvement in sexual misconduct due to their histories of physical, sexual and substance abuse. **To learn more about the past histories of abuse associated with many inmates, click here.** Compassion and understanding are necessary to manage inmates and to maintain equilibrium in the jail environment. However, compassion and understanding can also become the means by which inmates engage staff to do small favors, gain "trust", or learn more about the staff's personal life. Sometimes inmates are more attuned to noticing staff that are troubled than the sergeant. This complex interplay of human relations is what makes the occurrence and investigation of misconduct so difficult.

When staff fail to recognize and protect their professional boundaries with inmates, it can lead to

an imbalance of power. Either the staff member or the inmate/detainee may gain more power than their position demands, leading to inappropriate relationships. Barry D. Smith, Ph.D., who has studied and written about the elements of power and authority that exist by nature in the status of correctional staff and inmates, describes this dangerous situation, "Generally what happens is that an inmate or inmates will accumulate favors until a point of no return is reached. At this point, the correctional officer is so deeply involved that the inmates have control over the officer's job." It is critical for that staff to be properly trained, have support from coworkers, supervisors and administration, and continually assure that their professional boundaries with inmates are not breached.

The best staff training programs should include at least:

- ***A thorough indoctrination of zero tolerance, enumeration of prohibited behaviors, and highlighting mandatory reporting requirements;***
- ***The investigative process;***
- ***State law, case law, court decisions;***
- ***Statistical information about inmates/detainees that demonstrate how prior history of physical and/or sexual abuse, and mental illness, affects vulnerability to misconduct***
- ***How to seek employee assistance programs;***
- ***Staff behavior that can signal a problem or potential problem;***
- ***Confidentiality during investigations; and***
- ***Discussion of the benefits of the agency or organization self-policing, and how this also benefits the line staff.***

A critical element of prevention and competent handling of staff sexual misconduct is the education of inmates/detainees. A practice that has achieved significant results in many jurisdictions is to develop specialized orientation programs for incoming inmates and detainees, as well as on-going review of these procedures and behaviors with inmates.

Inmate/detainee orientation and on-going education on sexual misconduct should include at least the following:

- **The agency's policy of zero tolerance;**
- **Definitions of prohibited behaviors, by both staff and inmates;**
- **How inmates report allegations;**
- **What protections inmates have after reporting a violation;**
- **How to seek medical and mental health services;**
- **A prohibition against retaliation for reporting allegations;**
- **An explanation of the investigative process, including the policy on transfer, and movement or isolation of the parties alleged to be involved; and**
- **Procedures for how malicious allegations will be handled.**

Retaliation is a major concern for inmates and staff who report allegations of staff sexual misconduct. Retaliation can be staff retaliating against their peers for surfacing allegations, or against inmates for reporting. Inmates can retaliate against other inmates who, by reporting allegations, have upset the balance of power in the housing unit. The agency must have clear policies against any retaliatory acts, and must address retaliation with the same timely and appropriate sanctions as allegations of misconduct. Moving staff and/or inmates/detainees may be necessary to protect them, and should be done as soon as possible. Administrators must remember that retaliation is often "invisible" or subtle and therefore must be seriously addressed if the environment is to truly be zero tolerant.

The Investigation and the Investigators

Agency investigative protocols on how to manage allegations of staff sexual misconduct must be in place **before** allegations arise. At a minimum, these protocols should address:

- How reports are taken;
- Preliminary inquiry procedures;
- Notifying staff and inmates of investigation, where required by state law, administrative regulations or collective bargaining agreements;
- Medical and mental health intervention, as needed, for those involved;
- Collecting and preserving evidence;
- Reassignment of staff, if necessary, during the investigation;
- Rehousing of inmates, if necessary; and
- Establishing partnerships with outside agencies, such as prosecutors, state and local law enforcement agencies, hospitals, advocacy groups, etc.

Those assigned the job of investigating allegations of staff sexual misconduct need insight and skills that allow the layers of these difficult cases to be revealed. These investigations sometimes involve human nature at its worst, interactive human dynamics, staff that have compromised their integrity, and, possibly, friends and co-workers.

The investigator must be aware of the unique dangers of those in authority having sexual relationships with inmates/detainees. The investigator must also be able to handle the implications of potentially bringing about the criminal prosecution of a fellow employee, and even someone of higher rank. ***To learn more about Garrity and Miranda warnings and how they relate to investigations, click here.***

One aspect of internal investigations in jails is the inmate's quid pro quo. An inmate making an allegation, a victim or a witness, may demand something of the jail administrator in order to cooperate. This quid pro quo may include intervention in the inmate's current criminal case, rehousing, change in classification, special visits, or program participation. An agency may choose to have whatever policy is in its mission and best interest. It would be optimal in designing the

agency's investigative protocol to give factors like *quid pro quo* ample thought before the issue comes up. Does the investigator have the authority to "negotiate" with an inmate? Whatever happens in each case can become agency "practice", so careful thought is needed.

The example of *quid pro quo* is just one aspect of how any jail needs to think through how zero tolerance, mandatory reporting, and investigative standards are set. Even with the best procedures, the jail administrator may have the task of overcoming the "blue wall of silence" or other staff resistance to what they may perceive as inmate friendly and anti-staff. Zero tolerance, complete, fair and thorough investigations are in the best interests of staff. Such policies contribute to a positive work environment and safety.

What happens in smaller jails, where there is not the luxury of specialized training, or the allegations have so galvanized the staff that a peer cannot manage the investigation with fairness and impartiality? The local law enforcement agency is a resource, but few sex crimes investigators will understand and appreciate the jail culture. Some police agencies may even see the sex as "consensual" with no "victim." Other law enforcement agencies may see investigations as unproductive because the prosecutor will not rush the case to a grand jury due to the nature of the crime. What options exist?

Agencies who do not have the capacity for investigations need to acknowledge this fact, and move to establish relationships with investigating agencies before allegations surface. Development of a memorandum of understanding with the local police, local prosecutor, state police, state attorney general, or even state corrections' inspectors can provide resources. Cross training with partners can help the ability of jail staff to identify the presence of a crime, and preserve the crime scene and/or evidence until the investigative partner arrives. Training with the jail staff, and familiarization with the jail culture will allow sex crime investigators who usually investigate crimes in the "free" world to appreciate the nuances, subtleties, and culture that impact investigations in the custodial setting.

The list that follows provides a number of recommendations to enhance investigators' effectiveness:

- **Clear direction and support from the agency administration;**
- **Specific training on how to conduct investigations into staff sexual misconduct;**
- **Supervision of the investigative process through meetings with commanders and others, as necessary, to map out investigative options and plans;**
- **Specific, written, investigative protocols for each aspect of the process;**
- **Partnerships with other agencies, such as prosecutors, medical providers, and mental health providers who can provide advice, support and direct services during an investigation;**
- **Cross-referenced and easily accessible database of previous investigations;**
- **Sufficient staffing of investigative units, or other options, to ensure prompt and**

- o **thorough investigations;**
- o **Understanding of the demographics of the inmate/detainee populations; and**
- o **Understanding of the culture – both staff and inmate/detainee – within the facility.**

Adding Value to the Agency

At the conclusion of an investigation into an allegation of staff sexual misconduct, the work for the jail administrator continues. Taking information gathered during the investigation and assessing what needs to be "fixed" is the next step in the process. What do the investigative results, even if the allegations were not sustained, tell the administrator? Are there training implications? Do hiring standards need revising? Do posts need to be reconfigured? Are security systems adequate?

The agency can use these results to improve and add value to the agency. If experience tells us that we are about to make the same mistake, again, then using investigative results to improve hiring, training, policies and procedures, is essential.

Summary

As you come to the end of this article, ask yourself: is your agency prepared to address an allegation of staff sexual misconduct? Are you confident that your managers and supervisors have a zero tolerance for staff sexual misconduct? Can your staff clearly define their professional boundaries with inmates? Do you have a sexualized work environment?

An organization can take measures to preserve its operational integrity and the safety and security of those within its facilities, if its administrators and staff are committed to zero tolerance. This commitment includes establishment and enforcement of policy, specialized training, and leadership through example. Staff commitment to zero tolerance begins with a personal commitment to reporting suspected activities, and upholding policies and procedures. Investigators must be familiar with the unique nature of investigating staff sexual misconduct, and must be properly selected and trained for these investigations.

Authors:

Elizabeth Layman

Elizabeth Layman is a consultant on public policy and grant funding. Ms. Layman retired from the State of Florida with 17 years of service in corrections and parole, where she served as a Parole Officer, Administrative Hearing Officer, and Regional Director of the Florida Parole Commission.

Prior to service with the State of Florida, Ms. Layman served as a Police Officer and Detective with the Arlington County Police Department in Arlington, Virginia. Ms. Layman can be reach at (954) 741-1232 or Laymans@worldnet.att.net

Susan W. McCampbell is President of the not-for-profit Center for Innovative Public Policies, Inc., a company specializing in public policy consulting. Prior to beginning this company, Ms. McCampbell was Director for four years of the Department of Detention and Control for the Broward County, Florida, Sheriff's Office. Ms. McCampbell was also Assistant Sheriff for the City of Alexandria, Virginia, Sheriff's Office for 11 years. She also worked for the Police Executive Research Forum, Washington, D. C. Ms. McCampbell can be reached at (954) 726-5322 or smcc7913@aol.com

Andie Moss is a Correctional Program Specialist for the National Institute of Corrections in Washington, D.C., providing direct assistance to the Federal Bureau of Prisons and state departments of corrections. Prior to joining NIC in Washington, Ms. Moss served as the Assistant Deputy Commissioner of Operations in the Georgia Department of Corrections, where she was the on-site Commissioner's Representative handling the Cason v. Seckinger lawsuit. Ms. Moss has received the distinguished Governor's Award in Georgia and has been honored by the Director of the Federal Bureau of Prisons for her work in the area of staff sexual misconduct. Ms. Moss can be reached at 1-800-995-6423, ext. 140.