

Rape and Violence in the County Jails: What Do We Really Know

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My name is Michael Gennaco. For the past five years, I have had the opportunity to head up the Los Angeles County Office of Independent Review. Our group consists of a cadre of six independent attorneys whose responsibility it is to monitor allegations of misconduct against personnel from the Los Angeles Sheriff's Department in order to ensure a robust and fair investigation. We also make independent recommendations to the Department with respect to outcomes of those investigations. Finally, we regularly make recommendations for systems reform of the policies and practices of the Department. Since our existence, we have reviewed hundreds of criminal and administrative investigations, including occurrences of inmate deaths and other jail critical events. To our knowledge, we are the only oversight group who actually has an office in the interior walls of Men's Central Jail, the largest jail facility in Los Angeles County – a structure that houses upwards of 5,000 inmates daily.

Our experience with the County jails as an outsider yet with inside access to the facilities provides us a unique vantage point from which to address the issues surrounding jail rapes. Our experience in Los Angeles County may provide one perspective with which to shape the discussion regarding some of the potential factors that may contribute to jail rape and to suggest potential ways to address the current situation. Accordingly, we are pleased to have been invited to participate in this hearing of the Review Panel on Prison Rape so that we can share those experiences and perspectives. It might be helpful to first start with some illustrative examples of jail rapes that have occurred in Los Angeles County.

CASE ONE

A nineteen year old amassed a number of parking tickets that he has never got around to paying. He was then stopped on a traffic violation and booked into county jail on a Friday night. Because it is the weekend, he will not be able to see a magistrate until Monday. He is assigned to a dorm with about one hundred other inmates, ranging from low level offenders like him to state prisoners with violent pasts and other violent felons awaiting sentencing.

The nineteen year old is assigned to a double tiered bunk in the back of the dormitory. Eventually, he falls asleep. He is awakened by two state prisoners who pull him off the bunk and to a mattress located in an even more secluded area of the dormitory. He begins to struggle but eventually stops, feeling powerless to fend off the assault. Because scores of other inmates are simply looking on as the assault progresses, he does little to cry out. After the rape has occurred, he assumes that it is hopeless to report the incident and does not do so.

The next day, one of the onlooker inmates is teased by another inmate for his failure to stand up for his white homie. As a result of the repeated taunts, that inmate challenges one of the assailants from the night before. That ruckus is broken up by deputies and at that time, the witness inmate states that he needs to talk to the deputies. When he is taken out of the cell, the

inmate reports the rape from the night before. Eventually, charges are filed against the two assailants and they plead guilty and are sentenced to long prison terms.

CASE TWO

A female inmate is in custody and returns from a court date. As she is escorted to her cell, the deputy fails to secure the cell door. A few hours later, a male inmate worker is assigned to clean up the common area of the module. He notices that the door to the cell of the female inmate is ajar, walks into the cell and rapes the female inmate. The deputy assigned to monitor the module is not at his post. After the assault, the female reports the incident. A criminal investigation results in the conviction of the trustee and an internal affairs investigation results in the deputy being disciplined for his failure to secure the inmate and monitor the inmate worker.

These two cases are in many ways similar to other incidents in County jails and strikingly different in a couple respects. As illustrated in the first case, the opportunities for the commission of rape are numerous in the county jails. Most inmates are housed in multiple person cells or dormitories. Many of those housing assignments have areas which are out of the visual purview of jail authorities. Jail culture discourages intervention of ongoing crimes occurring in the cells and dormitories. Many victims of crimes in jails feel that reporting such crimes will not result in justice and may potentially make their situation worse and fear retaliation. Inmates usually have criminal records and their credibility will inherently be questioned should they decide to press forward with reporting the crime. Finally, assailants facing life or long term sentences often feel that they cannot be further effectively punished by the system so have little to lose in conducting further violent acts.

On the other hand, the two cases cited above are different from many of the rapes that occur in jail in that they were reported and successfully dealt with by the criminal justice and administrative system. It is interesting that in the first case, the incident was reported by a fellow inmate, not out of a sense of civic duty, but because he was accused of not standing up for a person of his race. The second case is unique in that the performance issues of the deputy who made it possible for the rape to occur were addressed and not only the assailant but responsible jail staff were held accountable.

What is it about the jails that make it a potentially target rich environment for rapes?

1. The design and structure of jails may make them difficult to monitor. Los Angeles County has by far the largest jail system in the country, housing 18,000 inmates on any given day in half a dozen facilities. The jails themselves are a polyglot of structures, some over fifty years old. Many of the jails are designed in a way that make it impossible to see into the cells on a 24/7 basis. For example, in Men's Central Jail, the only way one can look into each cell is to walk down a narrow gangplank. In some of the newer jails, bunks are stacked in twos or threes in dormitory settings. Inmates can easily learn the blind spots of these dormitories and use bedding and other materials to further hamper the ability to monitor their actions. There are relatively few cameras in the living quarters of the jails. Finally, staffing issues make frequent monitoring of the cells and dormitories a continuous challenge for jail authorities.

2. The changed nature of the jail population increases the likelihood of assault. When they were built, most of the county jail facilities were designed for a different type of inmate than are currently being housed there. In the past, most jails were filled with low level offenders serving short term sentences. Currently, the resume of the typical jail inmate has changed dramatically. Most of the jail inmates are persons charged or convicted of violent crimes. Scores of charged or convicted murderers and rapists are now housed in the county jails on any given day. While the “victim” class has been reduced substantially, there still are inmates housed in jail who are awaiting trial on non-violent offenses or have been sentenced to county jail. The combination of the increased number of hard core violent inmates and the reduced but still present victim class presents clear opportunities for rapes to occur.

3. The jail culture does not foster intervening or reporting of jail crimes. Inmates soon learn that the dominant jail culture does not tolerate intervening or reporting of jail crimes. With the exception of racially tinged assaults, inmates do not usually intercede when they observe violent actions occurring among fellow inmates. We have learned of instances of prolonged assaults, eventually resulting in even murder, in which inmates in the same cell or room have done nothing to interrupt those assaults. Inmates often do not cooperate with any subsequent investigation, claiming to have been sleeping or otherwise not witnessing the event. In two recent inmate murders, scores of inmates claimed not to have witnessed several inmates stomping to death one inmate in a confined area. This jail culture may go far to explain why, in the past six and one half years, there have been only sixty two reported sexual assaults in Central Jail, a facility housing five thousand inmates on any given day.

As a result of this jail culture, victims of rapes will often feel that reporting the crime will not result in an effective response by the criminal justice system. Moreover, those victims may also feel that reporting the crime may subject them to further harm in the way of real or perceived retaliation for doing so. To be labeled as a “snitch” often results in a custody situation that in some ways is as difficult to endure as to try to do the best to ignore the assault and hope that it won’t happen again.

This mind set is particularly prevalent in the jail setting where people are being shuttled and moved constantly from one housing situation to another. Unlike prisons, where inmates are often housed at the same facility and housing assignment for years, county inmates are constantly having their housing and facility assignments changed. This fact also potentially makes identification of assailants difficult as the victim inmate will likely not have had much experience with them.

4. The criminal justice system provides little deterrent effect on inmates who commit rapes in jail. For the reasons detailed above, there are obstacles in the custody situation that could well suppress the reporting of rapes. Inmates certainly are aware of this fact and could well surmise that the small likelihood of a rape being reported would embolden them to commit such crimes. Furthermore, even when the rape is reported, barriers unique to the custody environment make a successful criminal filing and prosecution difficult. As noted above, inmate witnesses are often reluctant to cooperate in any fashion with jail investigative authorities. Second, defenses of identification may be particularly effective in the relatively anonymous jail situation in which inmates are constantly being moved around. Finally, victim inmates will often possess

a criminal record that will call their credibility into question and subject them to significant impeachment at any trial proceedings. These obstacles may help to explain why less than a handful of prosecutions for sexual assault have come out of a 5,000 inmate facility over the past five years.

Perhaps as importantly, as with any jail crime, even a rare conviction provides little deterrent effect to the most hardened criminals. Lifers cannot be further effectively punished by even the most significant rape conviction and they know that. For all these reasons, while allegations of jail rapes must be aggressively investigated and, when appropriate, prosecuted, the most effective way to counter instances of jail rapes is to prevent them from occurring in the first place.

What should be considered in any proposal to reduce the likelihood of jail rapes from occurring?

- 1. Examination of current jail housing design.** As stated above, the design of housing areas in many jail facilities make it very difficult to monitor and detect inmate assaultive behavior as it is occurring. To the extent feasible, lines of sight need to be improved so that those entrusted to ensure the safety of inmates have the capability of doing so. Inmate created obstructions that prevent custody authorities from seeing into inmate housing must be discouraged and, when present, dismantled. As new facilities are built or old ones upgraded, single person housing units should be favored over dormitories or multiple person cells.
- 2. Surveillance cameras.** Cameras can go far to enhance the ability of jail authorities to monitor the activity of inmates. They can also provide a recording of instances of assault to help identify perpetrators after the fact. The mere presence of cameras may provide a deterrence to inmates who are considering committing such crimes from even doing so. While privacy issues do surround the posting of cameras in cells, such issues must give way to the overarching interest in providing safety to inmates housed in multi-person cells or dormitories.
- 3. Jail Staffing.** Jail rapes will occur less frequently if inmates have the real and perceived belief that their activities are being monitored. Especially in facilities that do not present jail authorities with the continuous ability to monitor the housing units, regular and frequent patrols of deputies will reduce the likelihood of assaultive behavior occurring in the inmate housing areas. In order to effectively run such foot patrols, however, staffing levels may need to be examined to ensure sufficient resources at the jail to conduct such monitoring.
- 4. Overcrowding.** Jail authorities that face overcrowding must come up with creative and non-ideal places to house the extra influx of inmates. As a result, jail areas that were not designed for housing nor conducive to monitoring are sometimes then used to house inmates. In Los Angeles County, inmates have been murdered who were housed in areas of the jail that were not designed for housing and that were virtually impervious to effective monitoring by jail authorities. The same potential exists with regard to jail rapes – housing inmates in areas where monitoring is ineffectual or problematic can only increase the likelihood that certain inmates will prey on others.

5. Classification and Housing Decisions. The decision about where to house an inmate will have tremendous implications on whether that inmate will be safe while in custody or prevented from harming other inmates as the case may be. It is critical that jail authorities carefully screen incoming inmates and make principled decisions based on precursor information such as criminal history, in deciding the appropriate “classification” of the inmate. Once the inmate has been classified, principled decision-making must also occur with regard to where the inmate will be housed and, in multi-person arrangements, with whom. These classification and housing decisions must be continually updated as jail authorities receive new information about how the inmate is functioning in the custody environment and as changed circumstances regarding their criminal charges occur.

6. Programming. Unfortunately, most jail systems do not have much ability or resources to provide programming to inmates in custody. As a result, most inmates spend the majority of their time in custody sleeping. The idleness faced by inmates is likely a participatory factor that causes some to act out in violent ways on fellow inmates with whom they are housed. In addition, the lack of programming provides little incentive for inmates to obey the rules of the jail.

7. Review and Accountability. When a violent act such as a rape or murder occurs, it is incumbent on jail authorities to thoroughly and critically review the incident from a number of perspectives. While certainly there should be a focus on the potential criminal violent act for possible prosecution, these critical events also provide potential insight with respect to weaknesses in the jail on either an individual or systemic basis. That is, the incident should be scrutinized to learn whether performance issues by jail staff may have helped allow the opportunity for the violent act to occur. For example, a jail staffer who fails to conduct security checks on a certain row creates increased opportunity for any inmate to commit a jail rape free from the likelihood of detection or interruption. Those entrusted with running the jails should ensure a broad ranging and thorough review of the performance of its staff and, when appropriate, hold those accountable who fall short of the agency’s expectations.

Any act of violence should also be scrutinized from a systemic basis as well. A careful examination of each incident can provide insight into how the perpetrator was able to carry out his act. Through this examination, the jail can improve policies, systems, and ways of doing business so that the likelihood of future acts of violence can be reduced. Too many times, this feedback loop is not provided and jail authorities fail to learn from the lessons of the past.

How can the outside community be best informed about issues endemic to jail rape and other violence?

1. Access: One fundamental way to inform the community about jail conditions that may lend themselves to occurrences of jail rape and other violence is to permit members of the public or their representatives meaningful access to the correctional facility itself. Prisons and jails are traditionally seen as closed societies, largely shielded from public purview. Often under the rubric of “security”, managers of these institutions have fended off entreaties from “outsiders” to enter into the jail or prison walls. This traditional view has been undercut by litigation and questioned by some progressive managers. As a result, in the County of Los Angeles jail

system, for example, the ACLU is permitted regular and routine access to the jails to talk with inmates and inspect jail conditions. Similarly, we at the OIR are provided continual and complete access to the jail facilities. As noted above, after a spate of jail inmate murders and at our request we were provided an office inside the jail perimeter. This concept of allowing outside entities open and continuous access to the prison facility is essential to external education of prison abuse, violence and related issues.

2. Transparency and Reporting: Clearly hearings such as the one occurring yesterday and today are important in shedding light and helping identify common factors that may impact the frequency of jail rape and violence. The work of this panel in bringing persons together to share their experiences and perspectives are important steps in addressing the issue and identifying solutions.

In addition, the roles of public interest and advocacy groups such as the Prison Law Office, and in particular my friend Don Specter and Steve Fama, in bringing these issues to the consciousness of the community are essential in educating the public and other important stakeholders on the factors that may exacerbate or lessen the frequency of violence.

In addition, prison and jail authorities can facilitate transparency by providing access to confidential and otherwise sensitive information to independent oversight groups. The independent oversight groups, such as we at the OIR, can then stand in the shoes of the public and review and evaluate internal critical events and policies and procedures. The oversight groups can use the information from their review not only to fulfill their mandates to ensure thoroughness, fairness, and objectivity in the agencies' internal processes, it can also push the concept of transparency of these events. In Los Angeles County, we have worked with the Sheriff's Department to provide a significant level of detail and transparency with regard to jail violence, in particular inmate murders. That detail of information is crucial in order for members of the public can learn about the issues that impact on the safety of inmates and then be able to assess the responsiveness of those entrusted civic or departmental leaders to the important issues in our jails.