

TESTIMONY TO THE REVIEW PANEL ON PRISON RAPE
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I am an Associate Professor of Law and Gender Studies at the University of Southern California. My scholarly and teaching interests include prison law, antidiscrimination law, and legal constructions of gender, race and sexuality. My scholarship on prison rape has focused on the ways that underexamined assumptions about race, gender and sexuality cloud public, academic and professional understandings of prison rape. The findings of the *Prison Rape Elimination Act* surveys suggest that professional and academic discourse about prison rape has overemphasized dangers that conform to stereotypical expectations, while neglecting forms of sexual victimization that contradict racial stereotypes and conventional gender expectations. Sex between female staff and incarcerated boys and young men is one surprising form of sexual abuse that, to date, has seldom been seriously addressed by prison rape law reformers.

My testimony draws upon a more detailed analysis presented in my 2012 article in the *UCLA Law Review*, *Engendering Rape*.¹ This article calls for greater critical, empirical and administrative attention to female-perpetrated prison rape. Multiple surveys of prison rape conducted by the Bureau of Justice Statistics repeatedly find that, in adult as well as juvenile facilities, male inmates report more sexual victimization by female staff than by male staff, and that victims of staff sexual victimization are disproportionately black. The results of the 2012 National Survey of Youth in Custody (NSYC-2) reconfirm these trends. In juvenile facilities, over 90% of staff perpetrators of sexual abuse are reportedly women.² The victims are disproportionately black.³

These findings seem may seem surprising, in light of racial stereotypes that construct black males (including teenagers) as perpetrators, not victims, of sexual assault. At the same time, conventional gender expectations make it difficult to imagine that women might be perpetrators of sexual abuse and that men or boys might be victims.

Too often, the surprising findings of female perpetration and black male vulnerability have been ignored, or explained away by unexamined assumptions that male inmates probably want to have sex with women staff and thus aren't harmed by it. Some observers have suggested that adult female staff are vulnerable to sexual exploitation by boys and young men in their custody. While survey findings from adult jails and prisons raise questions about these assumptions, the results of NSYC-1 and NYSC-2 raise particular concern.

To date, there has been little or no empirical investigation of sex between incarcerated male youth and adult female staff. Thus my prime recommendation is that qualitative studies be conducted to find out what youth and staffers think is going on when women staff have sex with incarcerated boys and young men. I would urge great caution in developing prison rape

¹ Kim Shayo Buchanan, *Engendering Rape*, 59 *UCLA L. Rev.* 1630 (2012).

² Allen J. Beck et al, *SEXUAL VICTIMIZATION IN JUVENILE FACILITIES REPORTED BY YOUTH*, 2012 (June 2013), at 23 Tbl. 14. 92.1% of all reported staff sexual misconduct involved at least one female perpetrator; 89.1% of victims reported *only* female perpetrators. *Id.*

³ Incarcerated black youth are about 50% more likely than nonblacks to report sexual victimization by staff: *Id.* p.20, Tbl. 11 (9.6% of blacks compared to 6.4% of whites reported sexual victimization by staff). Since 45.9% of incarcerated youth are black, we may infer that most youth victimized by staff are black.

policy recommendations without such empirical evidence. If we don't find out what is happening, there is a real danger of unconscious reliance on conventional gender expectations that might lead policymakers to assume that sex between women staff and incarcerated boys benign, in spite of evidence that it is often coercive.

I. Competing narratives about female staffers' sex with youth in custody

The question I've been asked to address—the “problem of inappropriate relationships between female corrections staff and youths”—presupposes that such sex takes place in a relationship. Along the same lines, the Review Panel's 2010 report on NSYC-1 asked, “What are the factors that lead female staff to become involved emotionally or sexually with male juveniles?”⁴

Staff-inmate sexual touching may take place in an emotional “relationship,” but we should not assume that this is typical of staff sex with child inmates. For example, few of us would whitewash an adult's sexual touching of a child under the age of consent as an “emotional or sexual involvement.” We also might not characterize the sexual abuse at Abu Ghraib as an “inappropriate relationship” between the female perpetrators and the male victims. Sexual touching of inmates by staff might be intended for sexual gratification, but it might also be intended to abuse and humiliate the inmate. To characterize female staff touching of male inmates as a “relationship” or “involvement” implies that it is mutually desired. NSYC-1 and -2 do not, and cannot, distinguish abusive sex or touching from situations in which the youth subjectively wants the sexual contact. In the absence of evidence, policy recommendations should assume that staff touching of incarcerated children or youth is benign.

In 2010, the Review Panel offered “two competing narratives” to make sense of female perpetration of staff sexual victimization. “One narrative is that sophisticated older youth manipulate young, vulnerable female staff into emotional relationships that evolve into sexual ones. The other narrative is that female staff members who are unable for a variety of reasons to build satisfying personal relationships with men gravitate, by design or by default, to juvenile facilities, where they find young men who are only too ready under the circumstances to enter into relationships with them that have a sexual component.”⁵ Both these scenarios assume that the adult female staffer is romantically involved with the child she touches sexually, and that she is vulnerable to exploitation by children and youth in her custody. Neither of them acknowledges that sex with female guards might scare or harm an incarcerated boy or young man.

Both these narratives frame incarcerated young men and boys as eager Romeos, keen to have sex with the only women who are available to them. Under this scenario, the main harm of staff-inmate sex would be to institutional order: female staffers are having sex on the job, and might be tempted to give inappropriate, illegal or dangerous favors to their young lovers. This scenario suggests scant reason for concern about physical or emotional harm to the incarcerated youth. Although this narrative is consistent with stereotypes about

⁴ REVIEW PANEL ON PRISON RAPE, REPORT ON SEXUAL VICTIMIZATION IN JUVENILE CORRECTIONAL FACILITIES at 35 (2010).

⁵ Id.

teenage boys in general and young black men in particular, the survey findings suggest that male youth often do not want female staffers to touch them sexually.

Policymakers should also consider another narrative that could make sense of staff sexual victimization. This narrative might acknowledge that incarcerated children—of any gender—are exceptionally vulnerable. We must at least consider the possibility that adult women who have sex with incarcerated youth may be sexually abusing them. This understanding would suggest that staff sex with youth should be treated as a very serious disciplinary violation, and should be prosecuted as the crime it is. It would also require that institutions take proactive steps to protect children against sexual abuse, to ensure that youth can safely report it, and to provide supportive counselling to victims in a way that does not publicly identify them.

The coercive nature of sex between women staff and male inmates may not be self-evident, but it is a crime in every state and at federal law. Depending on the age of the victim, it may also be statutory rape. When discussing sex between adult women prisoners and male staff, correctional administrators and academic observers routinely acknowledge that custodial staff wield enormous power over inmates. Staffers can tell inmates when to get up, when to go to sleep, whether and where they can work or study, where and with whom they will live, and whether and how they contact their families. Staff are authorized to use physical force to subdue inmates when they consider it necessary. Most importantly, staff are empowered to write disciplinary tickets that can send a child to solitary confinement or extend his or her incarceration. Thus, academic and correctional observers often argue that consent is irrelevant to staff-inmate sex: the power imbalance raises doubt about consent even when the inmate says she subjectively wanted sex with the staffer.

It is likely that, in real life, all these scenarios arise: some incarcerated boys and young men might want to have sex with female staffers because of romantic or sexual interest in the women. Many other incarcerated boys and young men, though, say they were forced, threatened or coerced into sex. There is every reason to think that these boys are victims, and that institutions that allow staffers to sexually exploit them are failing in their duty to protect these vulnerable children and young adults.

II. The evidence

The familiar sexual double standard stereotypes teenage boys as eager for sex with any available female, so that sex between teenage boys and adult women is harmless, even when the youth is incarcerated and the woman has custody. But the NSYC survey findings counsel great caution about characterizing sex between female staff and incarcerated male youth as “romantic” or harmless.

For example, although most sex between male youth and female staff reportedly involves no overt coercion, a large minority—36.6%—of sexually victimized youth say their staff perpetrator used force, threats of force, or other overt coercion.⁶ Moreover, women staffers’ use of coercion is not limited to nonviolent pressure. 20.3% of male youth who reported sex

⁶ The survey asked whether respondents had sex with staff “because they were forced, threatened with force, pressured in another way, or offered money, favors, special protection or other special treatment.” *Id.* p.9.

with staff said they were physically forced or were threatened with violence.⁷ 84.8% of male victims of *forcible* sexual victimization by staff said the perpetrators were female.⁸ Violent female-perpetrated staff sexual abuse cannot be reconciled with the “romantic” theory of staff sex with incarcerated youth.

Moreover, the incarcerated youth who have sex with staff are especially vulnerable. They are much more likely than other incarcerated youth to have a history of prior sexual abuse.⁹ For example, 29.3% of boys who had been sexually assaulted at another institution reported sex with staff in the current facility, compared to only 7.3% who had not been assaulted during another period of incarceration.¹⁰ Thus staffers are having sex with the group of inmates that we know are especially vulnerable to revictimization.

Thus many boys and young men who have sex with women staff are vulnerable young people who cannot escape staffers who force them into sex using violence, threats or coercive inducements. This reality defies conventional stereotypes about how we expect men and women to act. It deserves investigation, and should not be swept under the rug by an assumption that young men always want sex.

The NSYC-2 findings do offer some evidence consistent with the possibility that some incarcerated boys and young men might have subjectively wanted some of the sex they had with adult female staffers. Of youth who report sex with staff, most—about 63.4%—say there was no force, threat or overt coercion.¹¹ Most youth who had sex with staff were not physically injured (although 6.1% were injured by sex with staff).¹² Most youth who reported sex with staff reported that they always (17.4%) or sometimes (46.3%) “made the first move.”¹³ Only 36.4% said that the sexual activity was always initiated by the staffer. Moreover, staff perpetrators who didn’t use force or overt coercion were overwhelmingly women (as are staff perpetrators who did).¹⁴

Many respondents who said they had had sex with staff also reported behaviors by staff—such as giving pictures and gifts, writing letters, and confiding personal matters in the youth—that might be read as signs of romantic interest.¹⁵ These behaviors between a staffer and an incarcerated child or young adult do not necessarily indicate that the child wanted sex. They are inappropriate by any standard. These behaviors do not necessarily signal a healthy or reciprocal sexual relationship. Stalkers and abusers may engage in such behaviors

⁷ Another 21.5% of sexually victimized youth reported that the staffer gave the victim drugs or alcohol; and 12.3% had sex with a staffer because they were offered “favors or protection”: Id. p.24 Tbl. 15.

⁸ Beck, p.23, Tbl. 14 (79.3% of males who reported forcible SSV reported that all the perpetrators were women; another 5.5% reported forcible SV by both men and women staff. Only 15% of victims of forcible staff sexual victimization said all the perpetrators had been men.)

⁹ Id. p.20, Tbl. 11

¹⁰ Differences between those who say they’ve *ever* been sexually assaulted are smaller but still significant: 9.7% of boys with any history of prior sexual assault report SV by staff; only 7.3% of those who’ve never been sexually assaulted have sex with staff. Id. p.20 Tbl. 11.

¹¹ Id. p.24 Tbl. 15.

¹² Id. p.24 Tbl. 15

¹³ Id. p.25 Tbl. 16.

¹⁴ See notes 6-8, *supra*. 94.6% of incarcerated boys & young men who reported *non-forcible, uncoerced* sex with staff said all the perpetrators were women. Id. p.23.

¹⁵ Id. p.25.

just as lovers do. Moreover, young people who had sex with staff did not, in general, see these relationships as loving or romantic. Only 13.6% thought that they and the staff members “really cared about each other.”¹⁶

Thus the NSYC data indicate that incarcerated boys are much more vulnerable to sexual victimization than stereotypes about young black men might suggest. They also indicate that women are much more likely to perpetrate sexual victimization than traditional gender stereotypes suggest. Because we cannot rely on common sense to understand sexual coercion of boys by women, empirical investigation is needed to find out how staff and youth understand what is actually happening.

III. The need for qualitative investigation

The NSYC findings raise many unanswered questions that can only be answered by rigorous qualitative social science investigation. Here, I propose a few questions that such interviews might address. How do incarcerated youth in custody feel about their sex with staff? When staff perpetrators use no overt coercion, why do youth submit to sexual activity? How do these relationships begin, and who initiates them? Do inmates feel they have a choice about having sex with a staffer who asks them for sex without overt coercion or threats?

When staff perpetrators do use overt coercion, what kinds of coercion do they use and why does it work? Why do staffers who use such coercion expect to get away with it? What do the perpetrators seek from their victims: sexual satisfaction? romantic connection? to hurt or humiliate them? Or something else?

What do female staff think are the reasons their colleagues might have sex with inmates? Do female staffers see incarcerated teenage boys as desirable romantic or sexual partners? Do female staffers feel pressure to have sex with inmates? If so, how do inmates impose such pressure and how could institutions help staffers feel safer?

The answers to questions like these could guide an informed institutional response to staff-inmate sex. What preventive measures and administrative sanctions might deter staffers from having sex with incarcerated male youth? Might institutions protect youth against sexual threats or incentives by reducing staffers’ ability to impose unjustified disciplinary measures? How might staffers be taught not to act on any sexual feelings they might develop for incarcerated youth? Are there lessons to be drawn from public school policies about sexual harassment and abuse by teachers? What about the male youth who feel vulnerable or victimized by the sexual behavior of staffers—how can they be protected, what kinds of counselling and emotional support do they need, and how could it be provided without exposing them as victims?

¹⁶ “Nearly half (46.3%) said the incident was usually just sexual. An estimated 40.1% said the sexual contact was more like friends with benefits, and 13.6% said that they really cared about each other.” *Id.* p.25.

**TESTIMONY TO REVIEW PANEL ON PRISON RAPE:
PROVISIONAL BIBLIOGRAPHY ON FEMALE PERPETRATION OF SEXUAL ABUSE**
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Further to Chris Zubowicz' email to me of Dec. 30, 2013, I understand that the Panel has noticed a typographical error at p.2 of my testimony. As you may have discerned, the sentence reading "In the absence of evidence, policy recommendations should assume that staff touching of incarcerated children or youth is benign" should read, "In the absence of evidence, policy recommendations **should not assume** that staff touching of incarcerated children or youth is benign."

Mr. Zubowicz also relayed your questions about social science evidence on female sexual perpetration. There is not much research on female-perpetrated sexual abuse in institutional settings (he suggested day-care centers, schools, hospitals, and nursing homes). In my view, studies of sexual abuse of institutionalized teenagers and adults will be much more relevant than studies of sexual abuse of very young children (e.g., in day care or primary school). Incarcerated teenagers and adults may sometimes subjectively desire or even seek sex with staff. This does not excuse staff sexual victimization of incarcerated youth or adults, but it has implications for prevention and treatment. Such concerns, of course, are absent in addressing sexual abuse of pre-pubescent children.

The following bibliography is not exhaustive, and the works cited herein vary widely in terms of quality and authoritativeness. Please take it as a starting point for research, and not as a comprehensive guide.

Provisional Bibliography: Female Perpetration of Sexual Abuse

As far as I am aware, only **three law review articles** have specifically addressed sexual abuse perpetrated by female staff in carceral settings:

- Buchanan, Kim Shayo. *Engendering Rape*, 59 UCLA L. Rev. 1630 (2012)
- Smith, Brenda V. *Uncomfortable Places, Close Spaces: Female Correctional Workers' Sexual Interactions With Men and Boys in Custody*, 59 UCLA L. Rev. 1690 (2012)
- Smith, Brenda V. *After Dothard: Female Correctional Workers and the Challenge to Employment Law*, 8 FIU L.Rev. 469 (2013)

Two **student-authored law review notes** have also considered female perpetration of sexual abuse in institutional settings:

- Lauren A. Teichner, Note, *Unusual Suspects: Recognizing and Responding to Female Staff Perpetrators of Sexual Misconduct in U.S. Prisons*, 14 MICH. J. GENDER & L. 259, 276–89 (2008)
- Robyn Gallagher, Note, *Constitutional Law—Cross-Gender Pat Searches: The Battle Between Inmates and Correctional Officers Enters the Courtroom*, 33 W. NEW ENG. L. REV. 567, 599–601

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Female perpetration in institutional settings has also been studied in the context of **sexual abuse by schoolteachers**:

James Knoll, *Teacher Sexual Misconduct: Grooming Patterns and Female Offenders*, 19 J. Child Sexual Abuse 371 (2010)

Brian E. Oliver, *Preventing Female-Perpetrated Sexual Abuse*, 8 Trauma, Violence & Abuse 19 (2007)

Here are some **sources on female perpetration of sexual abuse more generally**, regardless of institutional setting:

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