

Spheres of Consent: An Analysis of the Sexual Abuse and Sexual Exploitation of Women Incarcerated in the State of Hawaii

Agnes L. Baro

ABSTRACT. Literature about the vulnerability of female prisoners and the ineffectiveness of sexual assault reform laws is used to explain how the sexual abuse and exploitation of Hawaii's female prisoners became a chronic problem. It is argued that similar problems exist in other states and that the social status of inmate sexual assault victims is not an adequate explanation for an apparent lack of law enforcement. Recommendations for research, staff training, policy development, and political action are included. [Article copies available for a fee from The Haworth Document Delivery Service: 1-800-342-9678. E-mail address: getinfo@haworth.com]

INTRODUCTION

When women incarcerated in foreign countries are sexually abused or sexually exploited by government employees, it is a human rights violation (e.g., Fitzgerald, 1992) but when the same thing happens to women in the United States, it is a "prison sex scandal" (e.g., Meyer, 1992). Why is the same crime defined so differently and why does the United States government collect data on its occurrence in foreign nations (Department

Agnes L. Baro, PhD, Associate Professor, School of Criminal Justice, Grand Valley State University.

The author wishes to thank Grand Valley State University for funding this research and officials of the Hawaii Department of Public Safety for making it possible.

of State, 1994) but not at home? Perhaps it is because Americans believe that, within the United States, this type of crime is simply not tolerated and that, when it does occur, it is an isolated event of little or no political significance. On the other hand, the sexual abuse or sexual exploitation of prisoners might be more easily recognized as a human rights violation when the government at issue is foreign, less democratic, and under scrutiny by the Department of State.

Nevertheless, media reports indicate that, in recent years, there have been "prison sex scandals" in California, Georgia, Hawaii, Ohio, Louisiana, Michigan and Tennessee (Harrison, 1992, December 30; Meyer, 1992, November 9; Watson, 1992, November 16; Curriden, 1993, September 20; Human Rights Watch, p. 90, 1993; Sweeney, 1993, January 6). These reports also indicate that the related events were not just isolated cases. For example, attorneys for inmates in Georgia insist that there was a sexual abuse pattern and practice that was largely ignored for at least ten years (Curriden, 1993). More recently, the National Association of Women Judges told the U.S. Senate that many women in U.S. prisons are being impregnated by guards (Estrich, 1994, March). The Michigan Women's Commission (1993) adds that women in county jails are being sexually harassed and abused and, in 1993, the Michigan State Senate investigated complaints of sexual abuse by staff at two women's prisons (Sweeney, 1993, January 6).

A comparison of media reports with this year's *Country Reports on Human Rights Practices* (Department of State, 1994) yielded a somewhat surprising result. While seven (14%) of the states have had fairly recent "prison sex scandals," 15% of all U.N. member nations and other nations receiving foreign aid from the U.S. government ($n = 193$) are described as places where female prisoners have been sexually abused or sexually exploited. Of course, this is a crude comparison and there might be enormous variation in the nature and extent of the problem. However, more rigorous comparisons have not been made and until they are, it should not be assumed that this type of human rights violation is a foreign but not a domestic problem.

In this study, the term "sexual abuse" is used to describe a full range of assaultive sexual behavior including rape, molestation, and forced oral sexual contact. "Sexual exploitation," is a reference to staff obtaining sexual favors from inmates by providing them with contraband such as cocaine or alcohol and/or by allowing inmates to break rules or obtain privileges.

Because there are no official data and because women in custody are understandably reluctant to report having sexual contact of any type with

corrections employees, we do not know the actual extent of this problem. What knowledge we have comes mainly from litigation or occasional media reports. Moreover, most cases of staff sexual misconduct are not litigated or reported to the media. Instead, they are much more likely to be treated as highly confidential personnel investigations. No one knows how many of these cases there are each year, how many are resolved in favor of correctional employees, or how many end in quiet dismissals.

In the past twelve years (1982-1994), Hawaii has had 38 officially acknowledged cases of corrections employees being dismissed or pressured to resign over charges of having sexual contact with female inmates. Considering the small size of the staff at the women's prison (from 30 in 1982 to 87 in 1992), 38 is a large number. However, these are only the officially acknowledged cases. As will be discussed, even when wardens requested formal investigations Hawaii prison officials tended to ignore the problem.

In the mid 1980s, Honolulu prosecutors obtained convictions in six cases of staff sexual assault. However, two of these convictions were subsequently overturned by a state appellate court and at least one of the correctional officers initially found guilty of rape has been rehired by the state.¹ When asked about the rehiring, one official stated that the officer had been fired for raping an inmate and when the conviction was overturned, the state could not sustain the dismissal. The officer's legal defense was that the act was consensual; he admitted having sex with the inmate but denied raping her. Sexual contact (*per se*) appears not to have been sufficient grounds for dismissal.

In 1987, the Hawaii Legislature amended the law in such a way as to criminalize any sexual contact between staff and inmates. The use of force or coercion is not a required element of this relatively new crime nor are inmates considered people who can legally consent to have sex with the staff. Several other states (e.g., Ohio, Georgia, and Michigan) have passed similar laws. Contrary to common law and common understandings of rape (Freeman, 1993; Horne, 1993), no matter how "manipulative" or "seductive" the inmate appears to have been and no matter how much "in love" the employee claims to have been, sexual contact is sexual assault. In effect, these laws codify the feminist assertion that "a man can force a woman to have sex without resorting to violence as the law understands it. Power will do" (Estrich, 1987, p. 83).

Legal definitions, however, do not necessarily change public opinion nor do they appear to have had any noticeable impact on prosecutors. Sweeney notes that Michigan rarely prosecutes employee offenders (1993, January 6). More recently, Michigan authorities won a federal court battle

to keep the U.S. Department of Justice from entering two of its women's prisons to investigate allegations of staff sexual assault (Michigan Department of Corrections, 1994, October 6). Similarly, Curriden (1993, September 20) reports that very few cases of alleged sexual assaults against Georgia's female inmates have resulted in indictments. In Hawaii, 32 cases of sexual assaults against female inmates have been sent to the Honolulu Prosecutor's Office since 1989 but there have been only 3 indictments and no convictions (Dayton, 1992, April 11; Altonn, 1993, January 22; Interview with corrections official, Martha Torney, April 14, 1994).

Even if most prosecutors agreed that laws against staff/inmate sexual contact should be vigorously enforced, the social status of inmate-victims and their criminal histories can diminish the chances of obtaining convictions. LaFree (1989) found that common assumptions about the proper roles and behaviors of women had a major impact on the outcomes of sexual assault complaints; convictions were much less likely when the victim was perceived as a "nontraditional" woman. In addition, Frohmann (1994) studied decision making in sexual assault cases and found that even when prosecutors believed that the assault took place, they would reject cases involving victims with histories of prostitution or illegal drug use. Since at least 40% of the female prisoners in the United States have these types of histories (Bureau of Justice Statistics, 1992, p. 7 and 1993, p. 626), similar rejections of any complaints they might file can be expected. Even when a case is prosecuted, the victim's inmate status damages her credibility as a witness. For example, jurors in Georgia said they just did not trust the female inmate witnesses; it took them less than 20 minutes to acquit an officer charged with 16 counts of sexual abuse (Curriden, 1993, p. 8).

However, it should be pointed out that the prison sexual assault laws are not the only ones that lack enforcement. Laws against staff/inmate sexual contact are part of a larger sexual assault legal reform movement. This 1970s and 1980s reform movement included enactment of many "rape shield" laws designed to limit the amount of admissible testimony about a victim's sexual history. A greater range of sexually assaultive behavior also became criminal. Estrich (1987) has documented a number of ways in which these reform laws have been ignored and/or eroded by appellate courts. Caringella-MacDonald (1988) also found that the newer laws were under constant appellate attack and that sincere enforcement efforts were not being made. Horney and Spohn (1991) evaluated the effects of rape law reforms in six large jurisdictions. Their findings were that (in five of

the six jurisdictions) there were no significant changes in reporting, indictments, or convictions.

More recently, the Majority Staff of the U.S. Senate Judiciary Committee (1993) surveyed all 50 states and found that over half (54%) of all rape prosecutions end in dismissal or acquittal and half of those who are convicted are either released on probation or serve less than a year in a county jail. Thus, it is argued that the lack of enforcement of the laws against staff/inmate sexual contact needs to be viewed within the context of a larger problem which is that women in general are not being protected by sexual assault legal reforms almost regardless of their status.

There are also research findings that other reforms designed to protect or empower women have been little more than legal formalism. For example, MacManus and Van Hightower (1989) found no relationship between states having equal rights amendments and enacting or implementing laws to combat domestic abuse. These authors insist that "The common assumption that states with ERAs are more progressive in their protection of the rights of abused women is just another myth" (MacManus & Van Hightower, 1989, p. 275).

Hawaii has an equal rights amendment. Hawaii was also the first state to legalize abortion and to mandate employer provided health care. With regard to gender equality, Baron and Strauss developed composite index scores for each state and ranked Hawaii among the top ten (1989, p. 86). However, a survey of 600 attorneys conducted by the Hawaii Supreme Court's Committee on Gender Fairness revealed that 40% of the respondents think that women in Hawaii are treated unfairly in criminal trials, personal injury cases, and divorce proceedings (Seto, 1991, May 7). In domestic abuse cases, Crites (1987) found that the Hawaii law requiring convicted batterers to serve 48 hours in jail and participate in counseling was not being enforced; out of 111 convictions only one man went to jail and only 8 were ordered into counseling. Hawaii also enacted sexual assault reform laws. Still, the related dismissal/acquittal rate (57%) is 3% higher than the national average (Majority Staff, U.S. Senate Judiciary Committee, 1993, p. 52).

Although some people might argue that female inmates are in a very special victim status category that renders their complaints about sexual abuse or exploitation incredible or not prosecutable, such an argument can also be a powerful "divide and conquer" strategy. This is an invidious strategy that divides women by placing them into categories of "good girls" (i.e. those who are presumed to be the least likely to consent) and "bad girls" (i.e., those who are presumed to be the most likely to consent). MacKinnon (1993, p. 210) makes this point much more eloquently when

she insists that "The law of rape divides the world of women into spheres of consent according to how much say we are legally presumed to have over sexual access to us by various categories of men." "Bad girls," like female prisoners, prostitutes, women who have previously consented, women who dress or act as if they have any sexual interest in any man, and even wives (in some states), are presumed to have granted sexual access. Even violent, coercive sexual acts committed against them are unlikely to be defined as cases of "real rape" (Estrich, 1987; Freeman, 1993; Frohmann, 1994). Considering the scope of this "bad girl" category, most female sexual assault victims end up occupying the same "sphere of consent"; the one that denies legitimate victim status.

By now the author hopes that readers will at least consider the proposition that the levels of, abandonment, indifference, and reluctance to investigate or prosecute found in the following case study reflect much more than the social status of the inmate victims. Instead, it is possible that this case reflects the status of all women whose experiences of sexual abuse and sexual exploitation are filtered through common understandings of race, class, gender, and patriarchal sexual scripts. Among these understandings are "common sense" notions about: men's uncontrollable sexual appetites and "natural" predatory behavior (Messerschmidt, 1994); lower class women and women of color (in general) being more likely to consent and less likely to be injured by sexual violence (Freeman, 1993); and all other women who dress or act seductively not being legitimate victims (Williams, 1984; Estrich, 1987; LaFree, 1989). Legal reforms have not changed these common understandings nor does it appear that the newer laws are having any discernable impact on arrest or conviction rates (Horney & Spohn, 1991; Majority Staff, Senate Judiciary Committee, 1993).

METHOD

This is a case study involving: a comparison of the literature on women in prison with the situation of female prisoners in Hawaii; some participant observation; interviews; and the examination of government documents and media reports. Since there are no similar studies, the work is also exploratory. It is focused mainly on questions about official awareness of and reactions to the problem of female inmates being sexually abused and/or exploited.

Participant observation is limited to the 1982-1985 and 1987-1990 portions of the study period (1982-1994). However, the years of partici-

pant observation were also years during which sexual abuse and exploitation occurred and this raises some ethical issues.

The first ethical issue is about the author's responsibility to report or "blow the whistle" on those who were sexually abusing or exploiting inmates. This responsibility is acknowledged but the author never witnessed any staff/inmate sexual contacts nor did any of the inmates tell the author that this was happening. The times when the author heard "rumors" about sexual contacts between staff and inmates were also times when she was assured the problem had been reported to high level officials or was under investigation by the Attorney General's Office and/or Honolulu Police Department.

Second, it should also be noted that those named in the study are people who have agreed to be quoted. Others, who went on the public record via court documents or media interviews, are quoted from these secondary sources. However, their names have been deleted from the study, and the quotations are used mainly to corroborate information obtained in interviews or through participant observation.

Third, the author was employed as a prison system staff officer and did not have direct authority over wardens or prison line staff. Normal duties included frequent visits to all state correctional facilities, identifying and helping to resolve a variety of problems, budgeting, and planning. These duties did not give the author access to investigatory or other confidential personnel information. This type of information was handled on a "need to know" basis; those who had it worked in personnel or internal affairs, had direct authority over wardens, or were supervisors of suspect employees.

Beyond the ethical issues, participant observation is also a method that involves problems of subjectivity and bias. However, in this study, it is used mainly as a way to gain access to state officials, know what questions to ask, who to ask, and where to locate documents. Conclusions are based on a compilation of evidence from the literature review, interviews, government and court documents, and media reports. If there is a major bias, it is that staff/inmate sexual contact should not be tolerated.

COMPARISONS FROM THE LITERATURE ON WOMEN IN PRISON

Although women are only about 6% of all state prison populations (Zupan, 1991, p. 33; Allen & Simonsen, 1992, p. 355), there has been a rapid increase in the numbers of women incarcerated. Between 1981 and 1991, there was a 308% increase in the number of women in state and

federal prisons. The increase in the male prison population during this same period was 219% (Bureau of Justice Statistics, 1993, p. 608). Hawaii experienced a similar phenomenon; between 1980 and 1990, the male population doubled but the female population increase was about 375% (Chesney-Lind, 1990, March 9, p. A-17). Although both are phenomenal increases, the much higher rate of growth in the female population may be creating new problems or simply aggravating those which have been ignored. Problems with inadequate and/or inequitable physical plants, program services, staff supervision, and staff training are characteristic of most women's prisons (Pollock-Byrne, 1990; Simon and Landis, 1991; Zupan, 1991).

Staff

In this study, staff issues are of primary importance. Here, the literature indicates two basic problems. First, correctional training programs are concentrated on addressing the control and management of male offenders. Very little curriculum material is available or employed to address the unique problems and needs of the female offender (Pollock-Byrne, 1990; Rasche, 1993). At least until 1994, this was also true of Hawaii; the basic training program was focused on male inmates and there were no special inservice training programs for staff assigned to the women's prison. Second, the gender composition of staff is also a concern in that gender imbalances can render both staff and inmates vulnerable. About inmate vulnerability, Zupan writes that the "absence of female staff, even if only for limited periods of the day or night leaves women inmates particularly vulnerable to exploitation and abuse by male staff" (1991, p. 34).

Correctional employees are often quick to point out that gender imbalances also leave male staff vulnerable to false accusations of sexual assault or harassment. These are very different concerns but no matter which side of the issue one considers, all have to do with what corrections officials call "cross gender supervision." And, even if major efforts were undertaken to develop appropriate training programs, there is a serious lack of empirical literature upon which administrators can rely. This is because most of the research on cross gender supervision is about women working in men's prisons (e.g., Jurik & Halemba, 1984; Crouch, 1985; Simpson & White, 1985; Zupan, 1992a); little is known about men working in women's prisons.

Prior to the 1970s, very few men worked in women's prisons and those who did had limited contact with the inmates (Zupan, 1992b). However, changes in employment laws have led to substantial increases; approximately 31% of the officers and 38% of the wardens assigned to women's

prisons are now men (Zupan, 1992b). By the late 1980s, the percentage of male officers working in direct contact with Hawaii's female inmates was well over 50%. Hawaii is also one of the 43 states in which male officers are assigned to supervise female living units (Zupan, 1992b).

Pollock-Byrne (1990, p. 85) suggests that it is the increase in the percentage of male staff that has given rise to growing complaints about sexual aggression. However, Pollock-Byrne also acknowledges that there is no formal research on the subject. The most we can say is that media reports (e.g., Curriden, 1993, September 20; Sweeney, 1993, January 6) indicate that a large majority of the known offenders are male. In Hawaii, 30 of the 38 officially acknowledged cases involved male employees.

Vulnerability of Female Prisoners

There is a growing body of literature that suggests that female prisoners are extremely vulnerable to sexual abuse and exploitation. For example, Moss (1986) found that almost half of the women in one state prison had prior histories of being sexually assaulted at least once before their 18th birthday. Crawford (1988) reports that 35% of the female prisoners in a large (n = 2,094) national sample also had community histories that included being the victims of sexual abuse. In Hawaii, Chesney-Lind and Rodriguez (1983) interviewed female prisoners at the Oahu Community Correctional Center (OCCC) and found that half had been raped when they were children and most had long histories of being sexually abused. Staff interviewed for this study generally agreed that at least half of the female inmates still had this type of history.

The significance of the data on childhood sexual abuse is that these victims often become women who are emotionally and sexually vulnerable. They also tend to have problems ranging from aversion to any sexual contact to frequent but emotionally unsatisfying experiences with multiple partners (Herman & Hirschman, 1981; Browne & Finkelhor, 1986).

Another characteristic of female prisoners that can make them vulnerable to staff sexual abuse and exploitation is that a considerable number have drug abuse and addiction histories and they appear to be more dependent on corrupt staff supplying drugs than their male counterparts. A 1991 national survey of state prison inmates revealed that 41% of the females as opposed to 35% of the males had used drugs such as cocaine and heroin on a daily basis the month before their incarceration (Bureau of Justice Statistics, 1993, p. 627). It is also much more difficult for female prisoners to get illegal drugs from each other or to set up inmate drug distribution systems (Pollock-Byrne, 1990, p. 154). In addition, women in lower socio-economic classes who become addicted to drugs also tend to have

histories of trading sex for drugs or of engaging in prostitution to support drug habits (Bureau of Justice Statistics, 1992, p. 7; Inciardi, Lockwood & Pottieger, 1993). Connections between drug addiction, prostitution, and the sexual exploitation of Hawaii's female inmates were drawn by almost every person the author interviewed including the prison system director, a prison doctor, and an inmate witness.

In situations where some female inmates are obtaining drugs, alcohol or other contraband, it is reasonable to suggest that they might pressure other inmates not to complain about sexual abuse. This question was asked repeatedly but no one (including an inmate witness) said that this type of pressure was applied. Instead, most people simply made remarks about a general reluctance on the part of the female inmates to file formal complaints, a lawsuit, or to testify against staff.

With regard to filing a lawsuit, Alyward and Thomas (1984) obtained a similar finding in Illinois. Even though the women's prison was more crowded and there was pressure from top level administrators to provide sexual favors, the women did not file a lawsuit. Research in other states has yielded similar results; women prisoners are less likely to take their grievances to the courts (Pollock-Byrne 1990, p. 163). This relatively low level of litigation leaves prison administrators in a more powerful position vis-à-vis women inmates in a number of ways and one of these is that they have more latitude to treat staff sexual misconduct as an in-house personnel problem. If such misconduct were the subject of more class action suits, there might be pressure to seek long term, systemic solutions or (at least) to prosecute the employee offenders.

Physical Plants and Programs

Even though female inmates are less likely to file lawsuits, they do have a history of suing for equal protection. The associated legal theory is that equal protection of the law means that states cannot justify disparate treatment on the basis of sex alone. There should at least be parity in male and female prison conditions, treatment programs, access to the courts and to medical care. However, Muraskin (1993) points out that even after twenty years of litigation and well established case law, disparate treatment of female prisoners is still the usual situation. Most states have only one female prison where inmates are housed at much higher levels of security than are necessary. This often means that they are also more likely to be subjected to strip searches and frequent "pat downs." Unlike the men, women rarely have a full range of facilities (i.e., maximum, medium, minimum, and community based) to match their true security needs. Pro-

gram opportunities are also limited and inequitable (Pollock-Byrne, 1990; Baunach, 1992).

Hawaii is a dramatic example of a lack of parity in physical plants and programs. Although it has had (at least since the mid 1980s) a generously staffed and funded prison system (Henderson, 1985; 1988; Camp & Camp, 1989; Legislative Auditor, 1989; 1992), the State of Hawaii has not given equitable treatment to its female prisoners. The standard explanation is that the population is too small to justify the range of facilities and opportunities provided to the men. Even when jail and prison operations are combined (as they are in Hawaii) under one administration, what results is still a very small female population (e.g., 156 during 1994). However, this population was also much too large and diverse to be housed in one small facility. Between 1982 and 1990, the facility was expanded but in 1984 a National Institute of Corrections consultant told the author and the prison system director that the women's prison was the worst he had ever seen and "indefensible" in a court of law. At that time, over 100 women of every imaginable type were jammed into a badly deteriorated "youth cottage" built to hold 35 juveniles.

The state signed a prison conditions, consent decree (*Spear v. Ariyoshi*, 1985) the following year and improvements were made. However, in 1989, consultants hired by the state legislature reported that the Hawaii women's prison was "one of the worst and most overcrowded" in the country (Legislative Auditor, 1989, p. 54). Then again, in 1990, the Director of the ACLU National Prison Project was quoted as saying that the women's prison was "just not fit for human habitation" (Dayton, 1990, November 17, p. A1). Meanwhile, the men's prison system had expanded to include an 80 million dollar medium security prison, an upgraded "honor camp" on the Big Island, and the first land grant, prison school in the nation. Until 1994, no comparable improvements were made for the female prisoners.

OFFICIAL AWARENESS OF AND REACTIONS TO THE PROBLEM

Between 1981 and 1982, there were approximately 45 women and 800 men incarcerated at the newly constructed Oahu Community Correctional Center (OCCC). During this same period, a criminologist from the University of Hawaii obtained permission to interview some of the female inmates. An article was published in a national journal indicating that: over half of the women had been raped as children; 88% were involved in prostitution prior to being incarcerated; and "extensive drug use and pros-

titution were recurrent themes" (Chesney-Lind & Rodriguez, 1983, p. 54). The inmates also reported that they were being sexually harassed by male officers who were "sneaking around at night" (Chesney-Lind & Rodriguez, 1983, p. 61).

In November of 1982 state level prison administrators moved the female inmates out of the OCCC. There were no public announcements about staff sexual misconduct nor were central office staff assigned to plan the move (including the author) advised that this type of problem existed. Instead, they were told that the women were being moved to make room for more men at the badly crowded OCCC.

State officials now admit that they did know about the 1982 sexual contact allegations. A memorandum filed in the federal district court by the state's attorney general contains the declaration that "It became necessary to relocate these inmates in November of 1982 for their own safety and security after allegations of improper sexual contact between staff and inmates came to light" (*Shaffer, Bonham & Eakin et al. v. Waihee et al.*, 1990).

State officials appear to have had enough confidence in "allegations of improper sexual contact" to open and staff a separate prison but not enough to launch a formal investigation. Meanwhile, 50 women were moved to a badly deteriorated, ill equipped facility built to house 35 juveniles but the staff remained under the administrative control of managers from the OCCC.

Approximately a year after the 1982 move, the unit manager in charge of the women's facility resigned. He told the author that he was resigning because he could not get an internal investigation of complaints about staff having sex with inmates. The unit manager also said that he had previously told his supervisors at the OCCC and "begged them to investigate." When no investigation was initiated, he appears to have gone over the heads of central office administrators and talked to a group of prisoner advocates who met with the governor. The Attorney General's Office launched an investigation.

During the investigation, an inmate who had reported being raped by a corrections lieutenant passed a lie detector test. According to a corrections administrator, inmate witnesses and victims passed lie detector tests and they were put into protective custody where they remained for two years (Interview, Ted Sakai 1-4-94). At this time, "protective custody" meant being housed in a separate cottage with a small group of women and being denied access to program services. In effect, protective custody was a punitive condition of confinement that may have discouraged future reporting.

Between 1984 and 1986 (as previously discussed) six employees were

prosecuted under more general sexual assault laws. In 1987, the staff/inmate sexual assault law took effect (Hawaii Revised Statutes, Chapters 707-730 to 733). However, within a year, rumors of sexual contacts between the staff and the female inmates surfaced again and may have caused some concern.

In a deposition taken several years later, the warden of the women's prison insists that her initial (September 1988) assignment "was to clean up the place because there was a petition sent to the Governor by inmates as well as staff" and "there was a lot of sex with inmates, and the drugs, and he wanted me to clean up" (*Coester v. Sumner*, 1990, Deposition of (name deleted), pp. 131-132). The warden also charged that department officials refused to investigate even when she filed preliminary reports of rape and sexual abuse (*Coester v. Sumner*, 1990, Deposition of (name deleted), pp. 137-139).

The warden also complained that the department would not remove officers charged with sexually assaulting inmates and that "I had no back-up from the department" and "you read it in the paper—21 people since 1988" and "The staff was not even transferred. They continued employment in the facility. So I fired people. I disciplined them. Some of them quit. I stopped emergency hires to stop this illegal behavior" (*Coester v. Sumner*, 1990, Deposition of (name deleted), p. 139).

In stopping the "emergency hires" (i.e., people not on the regular civil service list and often not qualified for permanent employment), the warden left herself in a vulnerable position. By this time, she was in charge of a prison with "temporary" buildings spread out over several acres. Full staffing and careful supervision were critically important. However, almost half of the security positions were vacant, it was taking over a year to hire regular employees, and the state would not transfer officers from the men's prisons even though these facilities were clearly overstuffed (Henderson, 1985; 1988; Legislative Auditor, 1989; 1992).

A former inmate, Lynn Shaffer, claims that by 1990 the women's prison was "a lot rougher" and that some inmates were getting cocaine and other drugs in exchange for sexual favors (Interview, 12-29-93). Shaffer also insists that:

I would be awakened at all hours by a guard coming in to wake up an inmate to take her out for sexual purposes. She was having nightmares. She was screaming. She asked me to help her. I can't say no to that. So, I would sit up and guard her so that—because if he came around to take her out, if he saw me awake, he would leave her alone. (*Shaffer, Bonham & Eakin et al. v. Waihee et al.*, 1990, Deposition of Lynn Shaffer, p. 98)

Two other former inmates support Shaffer's allegations. One insists that, by 1990, the women's prison was a chaotic, "filthy" place where "no one was in charge" (*Shaffer, Bonham & Eakin et al. v. Waihee et al.*, 1990, Deposition of (name deleted), p. 13). Another alleges that between January of 1990 and August of 1992 at least four correctional officers "either threatened her with solitary confinement and/or induced her with promises of drugs, alcohol and/or special privileges to engage in sexual activity" (*Eakin et al. v. State of Hawaii et al.*, 1993, p. 10). The alleged activity included "an incident where a pair of guards took turns photographing each other having intercourse with her" (Meyer, 1992, November 9, p. 23).

In response to legislative complaints about corrections management in general (Legislative Auditor, 1989), the state did hire two mainland prison administrators. In 1989, Kip Kautzky, former director of the Colorado prison system, was hired to serve as a "special master" to bring the state into compliance with the consent decree (*Spear v. Ariyoshi*, 1985). Then in 1990, George Sumner, former Director of Corrections for Nevada, became the director of the new Department of Public Safety organized to include the prison system.

Lynn Shaffer insists that she and other inmates met with Kautzky and the ACLU National Prison Project Director during the fall of 1990 and told them about being molested during pat down searches and about staff having sex with inmates (*Shaffer, Bonham & Eakin et al. v. Waihee et al.*, 1990, Deposition of Lynn Shaffer, p. 99). Kautzky confirmed that this meeting took place and that the women complained (Interview, 8-15-94). However, Kautzky also maintains that the allegations were not specific enough to support disciplinary action and that victims would not come forward to testify. Nevertheless, Kautzky insists that a number of internal investigations were initiated. Sumner also maintains that there were internal investigations but that the investigators were not competent (Interview, 12-29-93).

When he took over as director in 1990, Sumner insists that he was not fully briefed about the problem of sexual misconduct and that the warden of the women's prison "told many tales but never documented very well" (Interview, 12-29-93). Sumner added that by 1991, the warden had begun to provide detailed information but the inmates would not agree to testify. Meanwhile, Sumner was also hindered by an internal affairs unit that took months to complete any investigation and often failed to submit written reports; he reported that it took two years just to build and train a competent unit (Interview, 12-29-93).

By March, 1992, no prosecutions had been initiated but news stories

about how many people had been fired or forced to resign began to appear. Shortly after furloughed inmate Lynn Shaffer talked to the press, Sumner confirmed that 6 employees were under investigation for sexual misconduct (Dayton, 1992, March 14). Then, on April 8, 1992, the Honolulu Star-Bulletin obtained a copy of a deposition given by a former inmate who alleged that correctional officers who were sexually involved with inmates and/or negligent on the night an inmate was murdered were still at work at the women's prison (Memminger, 1992, April 8). The department then began to provide details and the public learned that since 1988, 22 employees had been forced to resign over allegations of sexual misconduct (Williams, 1992, April 8).

Sometime in 1992, Sumner obtained undercover investigators from California. Posing as correctional officers, these people infiltrated the women's prison. Evidence was obtained and in December of 1992 two officers were indicted for sexually abusing inmates (Williams, 1992, December 20).

From March, 1992 until January, 1994 there were periodic stories in the newspapers about additional investigations and charges. During this period, Sumner also told the press that there were specific reforms that would be made. These included: (1) Putting female inmates in the same uniforms worn by the male inmates "to remind staff that these are inmates" (Altonn, 1992, April 11, p. A6); (2) Increasing the ratio of female officers to two thirds of the security force (Altonn, 1992, April 11); (3) Developing and implementing sexual abuse prevention and treatment programs for female prisoners; and (4) Providing related training to the staff (Dayton, 1993, January 22).

In January 1994, the author visited the women's prison and conducted interviews with central office and prison level staff. Progress on the above listed reforms was as follows: (1) The female inmates were dressed in the same uniforms worn by male inmates; (2) Female officers were still only about 50% of the security staff; and (3) Sexual abuse treatment programs and related training were (reportedly) being developed but had not been implemented. In addition, a small section of cross gender supervision training that had been put into the 1989-1990 basic curriculum had been taken out and had not been replaced by any similar basic or inservice training.

In January 1994, John Kellum, the current warden of the women's prison, said that he did not believe that the problem of staff sexual misconduct had been solved and that, since August, he had received 3 inmate complaints (Interview, 1-3-94). However, by this time the warden had the cooperation of the Honolulu Police Department and an internal affairs unit

generally considered more competent than the one Sumner had inherited. The Health Services Officer, Dr. Kim Thorburn, agreed that the problem had not been fully resolved. Thorburn also expressed concerns about widespread substance abuse problems among both staff and inmate populations (Interview, 1-4-94). The prison system director, George Sumner, also told the author that he did not consider the problem solved (Interview, 12-29-93).

Although Sumner was pleased with the progress he had made, he said that reform was "like pushing a large rock up a hill for at least two years" (Interview, 12-29-93). Sumner also insisted that mid-level managers had known about the problem for several years but had "looked the other way" and that previous administrators had taken a "hit and run" approach at the problem "but never really tried to resolve it" (Interview, 12-29-93).

Response of the State Attorney General

In 1992, corrections officials did try to get help from the state attorney general. However, the head of the prison system's internal affairs unit reported that the Attorney General's Office would not take "consensual cases" (Altonn, 1992, April 9, p. A3). A staff supervisor at the Attorney General's Office said that this was a "miscommunication" (Altonn, 1992, April 9, p. A3) and "Where correctional officers used their position to coerce inmates to consent to sex, we will take a look, and if there is sufficient evidence, we will prosecute" (Altonn, 1992, March 27, p. A6).

The attorney general supported his staff by telling the press that it is difficult to get convictions in cases involving consent (Dayton, 1992, April 11). He is also quoted as saying that having "enough evidence to dismiss a person doesn't mean you have near enough evidence for criminal prosecution" (Altonn, 1992, April 9, p. A-3) and that when "romance" is involved, inmates are reluctant to testify (Altonn, 1992, April 17, p. A1).

There are several problems with the posture taken by the attorney general. First, he knew or should have known that prosecutions under the 1987 staff/inmate sexual assault law did not require evidence of coercion or a lack of consent. Second, since no one had prosecuted a case under this law, it is entirely unclear how he knew it was difficult to get convictions. Third, it is common knowledge among state officials that the standard of proof required to fire a Hawaii civil servant is almost identical to the standard used to convict people in a court of law (Interviews, Sumner, 12-30-93; Sakai, 1-4-94). Most of those who had been fired were not regular civil servants. They were "emergency hires" without the full range of civil service and employee union protection (Altonn, 1992, April 17).

The Honolulu city prosecutor agreed to take the cases from the attorney general. However, the prosecutor promptly dropped 21 of the cases he received because the three year statute of limitation had run out, there was not enough evidence, or inmates refused to testify (Altonn, 1993, January 22). Nine other cases were sent to him in 1992 and an additional 2 cases were sent in January, 1993 (Altonn, 1993, January 22). The prosecutor did get 3 Oahu Grand Jury indictments but one case ended in a mistrial, another was dismissed by the court, and the last has been in a "continuance" status for over a year. As of April, 1994, none of the 32 cases of alleged sexual assaults against the inmates had resulted in a conviction.

Response of the ACLU

Since 1985 women incarcerated in the State of Hawaii have been clients of the ACLU (*Spear v. Ariyoshi*, 1985). However, and even though the state has been chronically out of compliance with the terms of a related consent decree (Corrections Panel, 1989), the ACLU's role could be characterized as nonresponsive. Even after their client, Agnes Spear, was murdered, the ACLU did not take the state back to court.

On the evening of December 31, 1989, Spear was stabbed by another inmate. Although the hospital is only a mile from the prison, it took the ambulance approximately 20 minutes to get inside. Entry was finally obtained when a police officer drove his patrol car through a locked road barrier (Memminger, 1992, April 8). By this time, Spear had bled to death. There is an allegation that a correctional officer "left his post in order to pursue a sexual liaison with an inmate" ("Plaintiffs First Amended Pre-Trial Statement," *Spear v. Samuel et al.*, 1991, p. 5). The post at issue is the barrier across the road leading up to the women's prison.

It has not been proven that more prompt medical care would have saved Agnes Spear's life nor has the state admitted any negligence or direct responsibility. However, the state has paid Spear's father an out of court settlement of \$290,000 (Dayton, 1993, February 2) and the correctional officer accused of leaving his post has since been indicted on 8 counts of sexually assaulting inmates (Magida, 1993, July 14).

One year after Spear's death, the ACLU did *threaten* to have the women's prison "shut down" (Dayton, 1991, January 18, p. A-32). An ACLU official is quoted as saying "My concern was for my clients" who are "suffering today, and they have been suffering for five years" (Dayton, 1991, January 18, p. A-32) and "It's really terrible and I feel a lot of guilt personally because they have had problems for years" (Altonn, 1991, January 18, p. A-11). The director of the prison system added that if the

ity of an advocate. Attorneys who are prosecutors are supposed to advocate the people's position (spelled out in the law) and attorneys who represent victims are supposed to advocate their clients' position (spelled out in meanings these clients attach to what happened to them). Freeman makes this argument in a discussion of sexual assault cases and insists that lawyers know that advocacy is "their business" and that its purpose is "to convince a judge or jury that one's interpretation is correct" (1993, p. 545). In Hawaii, as in other states, it is quite possible that attorneys need to be reminded of "their business" which is to advocate for their clients by *openly* confronting those who refuse to recognize or enforce sexual assault laws.

It is also concluded that viewing female inmates as women who are beyond the legal protection of sexual assault laws is just another way of accepting a criminal justice strategy that has, for far too long, been successful in dividing women into "spheres of consent." The results are that few women are considered legitimate victims of sexual assault and even the reform laws are not being enforced.

Finally, the sexual abuse and/or sexual exploitation of any incarcerated population should be viewed as an intolerable violation of human rights. It is viewed and recorded as such by the U.S. Department of State in their annual "Country Reports on Human Rights." The message from this agency is that human rights abuses "remain widespread" and even multiply "in countries in which violators are not held accountable" (Department of State, 1994, p. xv).

NOTE

1. Interviews with Hawaii corrections officials: John Kellum, 1-3-94; Ted Sakai, 1-4-94; Martha Torney, 3-4-94.

REFERENCES

- Allen, Harry E. and Clifford E. Simonsen (1992). *Corrections in America: An introduction*. (6th ed.) New York: Macmillan
- Altonn, Helen (1991, January 18). "Intolerable women's prison faces closure." *Honolulu Star-Bulletin*, p. A11
- Altonn, Helen (1992, March 27). "Prison chief gets tough on sex suspects." *Honolulu Star-Bulletin*, p. A6
- Altonn, Helen (1992, April 9). "Senate will look into sex cases at prison." *Honolulu Star-Bulletin*, p. A3
- Altonn, Helen (1992, April 11). "Hearings this week on 5 ACO's and 1 civilian." *Honolulu Star-Bulletin*, p. A6

- Altonn, Helen (1992, April 17). "City prosecutor handed sex cases." *Honolulu Star-Bulletin*, p. A1
- Altonn, Helen (1993, January 22). "Prison sex abuse cases going to city prosecutor." *Honolulu Star-Bulletin*, p. A4
- Aylward, A. and J. Thomas (1984). "Quiescence in women's prison litigation: Some exploratory issues." *Justice Quarterly*, 1 (2), 253-276
- Baron, Larry and Murray Strauss (1989). *Four theories of rape in American Society*. New Haven, CT: Yale University Press
- Baunach, Phyllis Jo (1992). "Critical problems of women in prison." In Imogene Moyer (ed.) *The changing roles of women in the criminal justice system: Offenders, victims, and professionals*. Prospect Heights, Ill.: Waveland Press
- Browne, A. and D. Finkelhor (1986). "Initial and long-term effects: A review of the research." In D. Finkelhor, *A sourcebook on child sexual assault*. Beverly Hills, CA: Sage
- Bureau of Justice Statistics (1992). *Drugs, crime, and the justice system*. Wash. D.C.: U.S. Department of Justice
- Bureau of Justice Statistics (1993). *Sourcebook of criminal justice statistics: 1992*. Wash. D.C.: U.S. Department of Justice
- Camp, Camille and George Camp (1989). *The corrections yearbook*. New York: Criminal Justice Institute
- Caringella-MacDonald, Susan (1988). "Parallels and pitfalls: The aftermath of legal reform for sexual assault, marital rape, & domestic violence victims." *Journal of Interpersonal Violence*, 3, (2), 174-189
- Chesney-Lind, Meda and Noelle Rodriguez (1983). "Women under lock and key: A view from the inside." *The Prison Journal*, (2) 47-65
- Chesney-Lind, Meda (1990, March 9). "There's a better way to treat women prisoners." *Honolulu Star-Bulletin*, p. A-17
- Corrections Panel (1989). *Spring 1989 report of panel of experts*. Honolulu: Federal District Court #84-1104
- Crawford, J. (1988). *Tabulation of a nationwide survey of female offenders*. College Park, Md.: American Correctional Association
- Crites, Laura (1987) "Wife abuse: The judicial record." In Laura Crites and Winifred Hepperle, *Women, the courts, and equality*. Newbury Park, CA: Sage Publications
- Crouch, Ben (1985). "Pandora's box: Women guards in men's prisons." *Journal of Criminal Justice*, 13, 535-548
- Curriden, Mark (1993, September 20). "Prison scandal in Georgia: Guards traded favors for sex." *National Law Journal*, p. 8
- Dayton, Kevin (1990, November 17). "State prisons get mixed ACLU review." *Honolulu Advertiser*, p. A1
- Dayton, Kevin (1991, January 18). "ACLU threatens to have women's prison shut down." *Honolulu Advertiser*, p. A32
- Dayton, Kevin (1992, March 14). "Sex scandal erupts at women's prison." *Honolulu Advertiser*, p. A6