

The Genesis of Cruel & Unusual Punishment

A Continuum of “Deliberate Indifference”

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Introduction

The recent focus on the dynamics of solitary confinement has prompted me to write a personal document related to the warning signs and misconduct of those hired within large jails or correctional facilities that are in fact the core of the problem that causes the phenomena known as “deliberate indifference” and fortunately identify the fact they may also be the solution to the problem as they can become agents of change if they do relatively small ethical actions or decisions that may grow into a larger level of compliance with existing policy and procedures rather than cultural inferences and misunderstandings.

The degree of involvement in the corrective action depends on the depth and the degree of involvement these individuals have behaved as those that “stir the pot” should be immediately removed and new administrators be selected to handle this cultural change to diminish and eliminate this cultural disease that exists in many correctional and detention facilities throughout the United States. Keep in mind that administrators will be defensive and resentful of such accusations or allegations and will use their own creative filters to respond or deny such conditions do indeed exist under their command.

The very first reason for explaining the continuum of deliberate indifference is to explain why detention facilities or prisons become corrupt and formulate a culture of mistreatment and corruptive practices that escapes the eye of the top administrators but not without some degree of plausible deniability that this syndrome exists. Basically this practice of taking matters into their own hands comes from every level of administrators and is nothing more than a self-serving tool to justify the means and draw away attention from their own incompetency or failures. This profile creates a vigilante style of prison management incorporated with lies and misconduct. It also breeds contempt for the rule of law and the deliberate abuse of management tools designed to foster rehabilitation and compliance with institutional rules and regulations rather than breaking them. Policies are enforced with a high level of “mission creep” and arbitrary “tacit approval” methods that are not documented but silently understood by all that work there.

Unfortunately it often takes a scandal for change to happen and evolve the necessary actions to change the corruptive practices and improve the administrative knowledge, abilities and skills to return the facility back to an ethical and credible manner. Therefore, administrators and leadership must have the courage to address such travesties of justice and have the integrity to conduct legitimate and productive changes under their supervision and control. Past research has repeatedly confirmed that most scandals start with one employee doing relatively small unethical acts and grows to whatever level the leadership allows.¹

¹ Neil Tautman, PhD – Corruption Continuum www.ethicsinstitute.com/pdf/Corruption%20Continuum.pdf

Phase One

Although it would seem illogical or even unreasonable that corrections administrators and officers would take actions contrary to the rule of law or statutory regulations that give them the legal authority to act as peace officers within a jail or prison, the truth is that it happens. The main contributor to this “deliberate indifference” mentality is the lack of ethical training by many agencies.

Although agencies claim a sufficient amount of time allotted or dedicated to ethical conduct, the truth is that many skip over the importance of such behaviors and the accountability of being indifferent on the job. Having said that there are complex elements in the workplace we need to include other tangibles and inferences that dictate the mood, the temperament and the attitudes within jails and prisons and identify these dynamics that cause backstabbing, internal politics, hidden agendas, unfairness and complacency in doing their jobs as outlined by post orders or policies.

Under such conditions, a prisoner is left at the free-will of officers and administrators that have their own brand of justice attached to their performance and ethical conduct. This is where the genesis of these observable facts begins as the prisoner has two choices with this oppressive force; compliance or non-compliance. There is a third force that impacts the prisoner’s world as well and that is being in the wrong place at the wrong time creating a defensive mechanism that will result in him or her to be administratively segregated for the sole purposes of controlling behaviors, access to others and isolating to stifle communications with others.

Compliance can create conflict if the unethical officer deems the attitude or behavior offensive or rude in mannerism. It could escalate in a war of words that would lead to a provoked physical altercation or the unwarranted deployment of chemical agent.

Non-compliance is conflict at the very start and creates a huge amount of friction that elevates the situation rapidly. Sometimes so rapidly, the situation is out of control from the beginning. Under some circumstance, no supervisor is called and the unethical officer implements tools available to him or her to physically control the prisoner and justifies them later. The presence of no camera or surveillance tapes makes this easier to explain. The behavior of non-compliance will be exaggerated with words such as the prisoner took a “fighting stance” or “invaded my personal safety zone” by encroachment of my own safety.

The third force of conflict is being in the wrong place at the wrong time as it suggests he or she may have been a witness to an unlawful act, misconduct or other unethical event that requires them to be removed and silenced for the moment and at the same time, make them an implausible witness if seen and interviewed by an investigator.

Phase Two

Living under this oppressive mood, attitudes or mentality impacts the prisoner in many ways. Even if they choose to “do their own time” they will be wrongfully targeted for many different reasons outlined to understand how they target their victims inside a jail or prisons. Potential targets consist of:

Weak / Strong individual personalities

Bully personalities

Sexual harassment personalities

Gay / Homosexual behaviors

Bi-sexual behaviors

Mentally ill

High-profile cases

Nature of crime offenses

Gang membership or tattoos associating with gangs (street or prison)

Assaultive behaviors on staff

General offensive behaviors such as mad dogging, spitting, urinating in public, talking too much

What is strange about picking out a target is the fact that those individual that get involved in this process of identifying their subjects or victims are usually lacking the moral turpitude to have such a position of authority to begin with. A recent report by Charles Ryan, the Arizona agency director revealed a high rate of criminality within his own agency.²

Hence there are tangible and subtle commonalities shared between prisoners and officers, although not readily admitted by anyone that works in such a setting. It can and does create and escalate the conflict and aggression between them. Some believe these correlations or links are myths or misunderstandings; however, inside prison or jail, they are real.

1. Prisoners are known not to be held accountable for their crimes. Unethical officers are also not held to be accountable for their own integrity or performance. This empowers their behaviors as supervisors are either neglecting to deal with it or ignoring the problems.
2. Prisoners are often incarcerated and demonstrate a high level of anger and frustration. Unethical officers resent these prisoners as they personalize society's loss and focus on punishing them with more punitive methods than the court imposed. This level of punishment is exponentially imposed through other reasons that have impacted them [employees] personally such as unfair job assignments and promotions coupled with cynical attitudes by supervisors
3. Prisoners engage with a code of silence as he or she must do the time without snitching or ratting off anyone else while inside the joint. The officers that engage in this unethical conduct also engage in a code of silence that exists virtually in every correctional or detention facility.

² <http://www.azcentral.com/news/state/articles/20130228arizona-corrections-director-number-staff-arrests-worrisome.html>

While prisoners demonstrate loyalty to each other and their race, unethical officers do the same and become loyal towards each other for the purpose of having a united force in an “us versus them” combative arena sharing similar adversities and problems within the joint.

Once targeted, unscrupulous staff will ignore the personal needs, the legal access and the schedule of privileges or incentives designed for each custody level and tamper with these elements to the point of having the prisoners become stressed, frustrated and finding a limit to their coping skills that will eventually lead to a verbal confrontation or a physical altercation. Dwelling on these tools available to inflict behavioral anxiety and physical pain elevated the relationship to correspond to justification of higher custody levels.

Prisoners will begin to experience significant increases in personal problems, communication access, rescinding of privileges and the denial of common goods left undelivered to cause more pain, suffering or difficulties. This will result in elevated anti-social behaviors that justify writing ticket or misconduct reports even to the point of repetitive tickets written by one officer a group of officers orchestrating the path for another elevation in risk points and institutional custody levels.

This document has not yet addressed the impact of these tools of abuse as this process is quickly accelerated for those identified to be seriously mentally ill and not having the coping skills or functional abilities to withstand such harassment or constant provocation and infringes on their ability to survive seeing that many choose a path of self harm or self destruction to deal with their illness, frustrations and anger. One can only imagine that the willful withholding of a prisoner’s medication could result in bizarre and unusual behaviors that could trigger disciplinary action rather than treatment of the cause. These episodes may cause severe self-harm e.g. cutting, banging of the head against a hard object or destruction of state property that will also result in disciplinary action written even though the reasons are based on a mental illness diagnosis or diminished capacity to deal with this harassment in any other way but their own established coping methods.

Many untrained, unethical and unskilled officers are unaware of this oncoming psychosis or explosive critical incident thus these bad officers continue “poking the bear” until the prisoner exhibits or demonstrates a desired behavior that “threatens the security of the institution” or creates “harm to himself or others” housed with him or her warranting an immediate removal to an isolation cell for a “security watch” or in some cases, the mental illness is identified and the prisoner is put on a “suicide watch.”

Phase Three

Since it has now been demonstrated how a prisoner can make this journey from minimum or medium custody to a higher more restrictive custody level including level 5 referred to as maximum custody, it becomes clear that the best interest of the agency and the prisoners have not been attained. In fact the opposite has developed where there are acts of rampant misconduct undetected or unspoken of at this phase of the continuum.

Although allegations flow freely via prison mail, attorney visits and family conversation, the facts are rarely revealed and the allegations are rarely looked into. It is exactly this kind of reaction that allows unethical officers to continue this continuum of harassment and deliberate indifferences as nobody believes the prisoner. Through time, the administration has developed a track record that demonstrates the prisoner's unwillingness to conform to laws and institutional rules and regulations. Gleaning at their disciplinary records will reveal repetitive misconduct documenting a history of being a management problem and handled or housed accordingly to prevent harm to staff and or themselves.

All the while administrators are ignoring the ethical problems and deny such a problem exists under their command. These leaders are rarely in touch with the supervisory elements of their own agency and take the word of others as a conditional statement that all is well and no problems exist. Uncommitted to ethical conduct these administrators foster conditions that allows long term or prolonged administrative segregation placements to be approved and go unchallenged for years leaving the prisoner at the mercy of a system that is broken and flawed with unethical conduct from the bottom to the top.

Identifying these officers and supervisors that engage in this culture of deliberate indifferences towards prisoners can be resolved if the agency focuses on the best interest of all involved and look for these behaviors. This includes a deliberate effort to provide a lack of resources committed to ensure due process and fairness in disciplinary process; a culture of "looking the other way" and being uninformed administrators and a practice of condoning "cover-ups" that allows this practice to exist.

Red flags on increased solitary confinement placements:

- Excessive number of prisoner on prisoner assaults
- Excessive number of prisoner on staff assaults
- Increased rate of suicide watches
- Increased rate of security watches
- Increased rate in uses of force
- Increased use of detention units
- Increased rate of staff discipline
- Increased rate of grievances both staff / prisoners
- Increased rate of homicides
- Increased rate of suicides of both staff / prisoners

Summary

In this instance where there are red flags or indicators of management issues not being addressed or recognized misconduct occurs because prison managers don't do anything to stop the misconduct because they don't know how to stop it and with reporting this kind of behavior feel they are jeopardizing their own career and success for the cause that basically believes that it will eventually go way or he or she will be promoted and re-assigned to another location

leaving the problem for other administrator to address if they choose to do so. These kind of unethical leaders are unfortunately common and breed contempt for those wanting to do the job as prescribed by law or policies.

Weak administrators refuse to stop it or allow circumstances to develop such a culture as they just don't have the courage to make change. They lack the skill, the knowledge and the intestinal fortitude to carry out their duties with good intentions and sound moral obligations to follow the law, mission statement and the policies of the agency with good faith.

This negative empowerment of unethical conduct among staff, supervisors and management is the primary and main reason why misconduct is able to flourish or grow with confidence that they won't get caught. Wherever there are signs of abuse and excessive harassment grievances and complaints you will find two elements destructive to good prison management and operational situations. This environment fosters and teaches unethical officers that should be feared by other officers ethical in conduct but feeling helpless in changing the environment because supervisors are not backing them up or supporting ethical performance standards.

By default this creates a culture of hypocrisy and fear that dominates the other cultures within the prison or jail setting. Created over prolonged periods of time this disease is caused by ignoring the ethical needs of prison management and those empowered to operate them.

Fear dominates communication and other elements that could in fact disclose the existence of a mentality that embraces the continuum of deliberate indifference. Fear comes in many different forms. Fear can be imposed through the political scene or presence of the job, the personal risk involved of the job and the fact that you may not get the back up you need when confronted with a hostile situation on the job. Fear is imposed with many different hidden agendas but co-workers and supervisors as well as managers and administrators. Creating jobs in an "at-will" classification gives them complete power to hire and fire someone instantly without good reasons.

The hypocrisy is the denial that such elements are present or exist within the prison or jail settings. Hypocrisy is mostly private and can be relayed through an informal chain of command that targets those challenging the unethical conduct and speaking out about it. The lack of administrative support can create extreme bitterness on the job and eventually transform a good officer into a bad officer as they decided to "not rock the boat" and go with the flow to do their own time and retire or transfer or resign at their most opportunistic moment leaving the prisons and jails at the mercy of unethical officers empowered by those above them.

