

behaviors, deficits in judgment and impulse control, memory loss, hypersexuality, and two prior instances in which she alleged she was the victim of forced sexual intercourse. The court noted this information was supplemented by the victim's testimony. The court found that the state appeals court was appropriate in its determination that the sample of the medical records was representative of the entirety of the available records and providing only a sample was not an unreasonable application of federal law. The Second Circuit further concluded that the information provided was sufficient for the defendant to cross-examine and challenge the witness's credibility.

The dissent stated that the trial court's decision to provide only the 28-page sample of records denied Mr. McCray the right to defend himself and compromised the fairness of the trial. The dissent said that access to the full records would have provided the defense with substantial evidence undermining the credibility of the witness, including that the victim experienced distortions of memory and reality, had a history of confabulating, and her prior accusations of her father raping her had been unfounded. The documentation revealed the victim had "short term memory loss" and selective memory. The withheld information was thus felt to have had the potential to undermine significantly the credibility of the witness as well as to corroborate Mr. McCray's account of events.

#### Discussion

Similar to *McCray*, the Third Circuit Court of Appeals considered the question of withholding mental health evidence in *Wilson v. Beard*, 589 F.3d 651 (3d Cir. 2009). In *Wilson*, the lack of access to mental health records relevant to the credibility of a witness was believed to have interfered with the fundamental fairness of the proceedings. Unlike in *Wilson*, in *McCray* the court concluded that the provision of only a sample of the available medical records did not interfere with the fundamental fairness of the proceedings.

The decision in *McCray* affirms the role of the courts as gatekeepers with regard to determining what medical records may be introduced into evidence. In this role, the courts must assess the relevance of the medical records as well as the evidentiary value of the information in such records when determining what records may be submitted into evidence. In *McCray*, the court found that a trial court might conduct such an analysis and reasonably conclude that a subset of

documents, selected from the entirety of the medical record, provides a representative sample of the information from the medical record. In doing so, the court could determine that this sample was adequate to ensure the fundamental fairness of the proceedings.

The gatekeeping role of the judge has previously been identified as a protection against unnecessary or inappropriate use of sensitive materials, including confidential mental health records. This responsibility is further complicated by the need to determine when privileges afforded to mental health records might be outweighed by their relevance to a given case, as set forth in *Fuentes v. Griffin*, 829 F.3d 233 (2d Cir. 2016). For cases of alleged sexual assault, some jurisdictions, including New York, have imposed Rape Shield statutes (N.Y. C.P.L.R. 60.42 (2021)), allowing the court to exclude evidence related to the victim's reputation or sexual history if the information is felt to not be relevant to the present case. The questions raised in *McCray* ultimately reflect the challenges associated with balancing the right to evidence under *Brady* with the need to ensure that only information salient to the interests of justice be admitted into evidence. Forensic psychiatrists should understand the legal factors governing admission of medical records into court proceedings to be able to discuss the topic with the attorneys consulting them.

## Deliberate Indifference by Officials in Case of Inmate-on-Inmate Violence

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### Qualified Immunity Applies to Officials Performing Government Security Function in Case of Inmate-on-Inmate Violence

DOI:10.29158/JAAPL.230039L1-23

**Key words:** deliberate indifference; qualified immunity; Monell claim; failure to protect

In *Morgan v. Wayne County, Michigan*, 33 F.4th 320 (6th Cir. 2022), the U.S. Court of Appeals for

the Sixth Circuit considered a suit brought by Felicia Morgan, an incarcerated person, against sheriff's deputies and other government defendants after she was involved in a sexual encounter with another inmate. The Sixth Circuit affirmed the district court's grant of summary judgment in favor of the defendants, finding that the deputies were not deliberately indifferent to the risk of inmate victimization, comprehensive security protocols were in place, and qualified immunity extended to the governmental function of providing security rather than medical care.

#### Facts of the Case

Felicia Morgan had a history of mental illness. In 2005, she was serving a sentence at the Scott Corrections Facility in Michigan when she was charged with assaulting a prison guard. She was transferred to the Wayne County Jail for arraignment. While there, she had an exacerbation of her psychiatric illness involving hallucinations and attempted suicide. She was moved to a psychiatric hospital that was contracted by the municipality to provide psychiatric treatment for inmates. The hospital unit housed both male and female inmates. Inmates of different genders were housed in different parts of the unit. Further, the inmates were prohibited from entering each other's rooms. The clinical staff were employees of the hospital and not of the jail.

Three sheriff's deputies were typically assigned to the unit to provide security. If a deputy needed to leave the unit, the informal practice was that the deputies would "relieve one another." On the day of the incident in question, one deputy was at the front desk, a second deputy had left the unit for a lunch break, and the third deputy was assigned to make rounds but had left to use the restroom. While only one deputy was present on the unit, a hospital staff member discovered Ms. Morgan having sexual intercourse with another inmate. Deputies were alerted to the situation and took a statement from Ms. Morgan. She was taken to the hospital for evaluation but refused a rape kit examination. Ms. Morgan later gave birth to a child, apparently the result of this sexual encounter.

In 2017, Ms. Morgan was paroled from Scott Corrections Facility. In the same year, she filed claims against the deputies, the city, and the state government. She argued the deputies had been deliberately indifferent to her risk of victimization, and the city had failed to properly supervise the hospital unit. She argued the state was liable under a *Monell* claim

(referring to *Monell v. Dept. of Social Services*, 436 U.S. 658 (1978)), which imposes liability for an illegal policy or practice contributing to an injury. The district court granted summary judgment in favor of the defendants on the bases that the deputies were entitled to qualified immunity; the evidence failed to support a claim for supervisory liability; and Ms. Morgan failed to establish a claim under *Monell*. Ms. Morgan appealed.

#### Ruling and Reasoning

The Sixth Circuit first determined the appropriate standard of review for her claims. Ms. Morgan was both a convicted prisoner (subject to Eighth Amendment protections) and a pretrial detainee (subject to Fourteenth Amendment protections) at the time of the alleged assault. Ms. Morgan had argued her claims under only the Eighth Amendment. The Sixth Circuit court applied this standard, which is more stringent.

To support her Eighth Amendment claim, Ms. Morgan needed to establish the deputies knew of and disregarded a risk of substantial harm and that, having such knowledge, they culpably failed to infer the existence of the risk. The deputies had some knowledge of the inmates' prior behavior. For example, the inmate who had the sexual encounter with Ms. Morgan was known by one of the deputies to "flirt" and be "sexually preoccupied." The court held there was no evidence that knowledge of these tendencies could reasonably be extrapolated to a substantial risk of harm by sexual assault. The other deputy had no specific knowledge of violent tendencies other than "general knowledge that prisons are dangerous places" (*Morgan*, p 327). Under the facts of the case, there was insufficient evidence of deliberate indifference.

Ms. Morgan asserted a *Monell* claim, alleging that federal violations occurred because of a defective municipal policy or custom. To sustain a *Monell* claim, a plaintiff must identify a policy, connect the policy to the defendant municipality, and show that administration of the policy caused the plaintiff's injury. Ms. Morgan argued that it was illegal policy to house male and female inmates together without sufficient security and supervision. The court disagreed, finding that the Eighth Amendment does not require separation of the sexes. The court concluded Ms. Morgan had not provided sufficient evidence to support these claims. The court explained that Wayne

County had a comprehensive security protocol, there had not been a pattern of constitutional violations, and there had been no failure to train employees to handle such recurring situations.

In addition to the federal claims, Ms. Morgan brought state-law claims for negligence, gross negligence, and wrongful conception. In its analysis, the court relied on the principle that there is immunity from liability when an actor is engaged in a governmental function, as per Michigan's Governmental Tort Liability Act (Mich. Comp. Laws § 691.1401 et seq. (2012) ("GTLA")). The court concluded that although Ms. Morgan was an inmate hospitalized for psychiatric illness, the defendants were providing security assistance and her sexual encounter was related to a lapse of security. Government immunity applies in this context.

#### Discussion

*Morgan* is instructive for forensic psychiatrists. The case raises the question of who holds the responsibility for protecting inmates from victimization and what are the appropriate training standards for those responsible to prevent such violence. The court examined the functions of the defendants and found convincing evidence that the deputies had no preexisting knowledge of specific risk that would have required them to act.

In this case, the harm took the form of the sexual encounter and resulting pregnancy. In the analysis for summary judgment, the court considered the facts in light of Ms. Morgan's testimony that there was at least one nonconsensual sexual encounter with another inmate. The court did not address whether

Ms. Morgan or other inmates have the capacity to consent to sexual relationships with peers. Moreover, it is unclear if Ms. Morgan's capacity to consent to sexual contact was impaired by her mental illness. It is worth noting that, in Michigan, some circumstances of sexual activity involving persons under the jurisdiction of the Department of Corrections amounts to criminal sexual conduct under Mich. Comp. Laws § 750.520c (1)(i-1)(2012). These questions were not specifically addressed in the court opinion.

The court's analysis focused on whether the defendants violated existing policies or laws. The court found the defendant deputies, as employees performing a governmental function, were entitled to immunity under GTLA. The court did not decide whether the GTLA would have extended immunity to clinical staff of a hospital contracted by the county to provide care to inmates. It is possible that an inmate could bring claims against the clinical staff instead of (or in addition to) the custodial staff. It is not apparent if the court would have reached a different conclusion about whether a psychiatrist was aware of and disregarded a risk of substantial harm or culpably failed to infer the existence of the risk.

Prudent psychiatrists providing care for prisoners should be familiar with the facility's safety and security policies. They should also advocate for policies that clearly describe the roles of staff who provide security and clinical services in the facility. Well crafted policies, appropriate training on the policies, and strict adherence to the policies are needed to mitigate risks to the safety of inmates as well as to minimize the chances of allegations of wrongdoing being brought against staff.