

William & Mary Law School Symposium: A Place in History

November 9, 2018

The Dawn of a New Jurisprudence? Jails, Prisons, and Equal Rights

Limited Bibliography

STATUTES & REGULATIONS

Prison Litigation Reform Act, 42 U.S.C. §§997e, 1915, 1997

Prison Rape Elimination Act, 42 U.S.C. §§15601-15609

Standards to Prevent, Detect, and Respond to Sexual Abuse and Assault in Confinement Facilities, 79 Fed. Reg. 13100 (Mar. 7, 2014) (codified as 6 C.F.R. sec. 115 *et seq.*)

CASES

Ashann-Ra v. Virginia, 112 F. Supp. 2d 559, 571 (W.D. Va. 2000) (gender classifications in prison regulations “must withstand intermediate scrutiny to survive an Equal Protection challenge”).

Bukhari v. Hutto, 487 F. Supp. 1162 (E.D. Va. 1980) (invoking intermediate scrutiny but also quoting *Barefield v. Leach*, No. 10282 (D.N.M.1974) 37-38, “the Equal Protection Clause requires in a prison setting . . . parity of treatment, as contrasted with identity of treatment, between male and female inmates”).

Corr. Servs. Corp. v. Malesko, 534 U.S. 61 (2001) (not extending *Bivens* to action for damages against contracted prisons services company).

Estelle v. Gamble, 429 U.S. 97 (1976) (deliberate indifference to a prisoner’s serious health care needs violates the Eighth Amendment).

Farmer v. Brennan, 511 U.S. 825 (1994) (prison officials not liable if they prove they were unaware of an obvious risk or if they responded reasonably to a known risk, even if harm not averted).

Ferguson v. Stafford County Dep’t of Social Services, 14 Va. App. 333, 417 S.E. 2d 1 (Va. Ct. App. Apr. 14, 1992) (adoption and termination of parental rights).

Greene v. Tilton, No. 2:09-CV-0793, 2012 WL 691704 (E.D. Cal. Mar. 2, 2012) (applying heightened scrutiny for gender discrimination).

Helling v. McKinney, 509 U.S. 25 (1993) (prisoner’s exposure to secondhand smoke held unconstitutional as cruel and unusual punishment).

Hudson v. McMillan, 503 U.S. 1 (1992) (absence of serious injury is relevant to but not determinative of whether the use of force is wanton and unnecessary).

Johnson v. California, 543 U.S. 499 (2005) (strict scrutiny applies to all government racial classifications, including in prisons).

Kingsley v. Hendrickson, 135 S. Ct. 2466 (2015) (on an excessive force claim, pretrial detainee must show only that the force purposely or knowingly used against was objectively unreasonable).

Klinger v. Dep't of Corrections, 31 F.3d 727 (8th Cir. 1994) (setting "similarly situated" as a threshold requirement).

Minneci v. Pollard, 132 S. Ct. 617 (2012) (no *Bivens* remedy where state tort law authorizes adequate alternative damages actions).

Moore v. Lee County Dep't of Soc. Servs., 2015 Va. App. LEXIS 322 (Va. Ct. App. Nov. 10, 2015) (adoption and termination of parental rights).

Redman v. Roanoke City Dep't of Soc. Servs., 2016 Va. App. LEXIS 181 (Va. Ct. App. June 7, 2016) (adoption and termination of parental rights).

Roubideaux v. N.D. Dep't of Corrections & Rehabilitation, 570 F.3d 966 (8th Cir 2009) (applying intermediate scrutiny to gender-based classifications in prisons).

Sassman v. Brown, 99 F. Supp. 3d 1223 (E.D. Cal. 2015) (summary judgment in favor of plaintiff's claim that state's exclusion of men from its Alternative Custody Program violated the Equal Protection Clause).

Turner v. Safley, 482 U.S. 78 (1987) (prison regulation impinging on inmates' constitutional rights passes constitutional muster if "reasonably related" to a "legitimate penological interest").

Veney v. Wyche, 293 F.3d 726 (4th Cir. 2002) (applying rational basis test to equal protection claims on the basis of sex discrimination in the penological context).

Washington v. Davis, 426 US 229 (1976) (finding for police department over claims by African Americans that test disproportionately excluded African Americans).

Yates v. Stalder, 217 F.3d 332, 335 (5th Cir. 2000) ("If legitimate penological goals can rationally be deemed to support the decision to treat male and female prisoners differently, then they are not similarly situated for Equal Protection purposes.").

West v. Va. Dep't of Corrections, 847 F. Supp. 402, 405 (W.D. Va. 1994) ("sex-based classifications, even in the context of unequal prison conditions, are given 'intermediate' scrutiny").

Women Prisoners of D.C. Dep't of Corrections v. District of Columbia, 93 F.3d 910, 927 (D.C. Cir. 1996) ("grave problems with the proposition that work details, prison industries, recreation, and religious services and counseling have anything in common with the equality of educational opportunities with which Title IX is concerned").

SECONDARY SOURCES

ACLU of Virginia, *WOMEN IN THE CRIMINAL JUSTICE SYSTEM: PATHWAYS TO INCARCERATION* (Aug. 27, 2018), <https://www.acluva.org/en/women-in-prison>.

Kendra D. Arnold, *The Right to Live: A Constitutional Argument for Mandatory Preventative Health Care for Female Prisoners*, 10 WM. & MARY J. WOMEN & L. 343 (2004)

Kim Shayo Buchanan, *Impunity: Sexual Abuse in Women's Prisons*, 42 HARV. C.R.-C.L. L. REV. 45 (2007)

Heidi Lee Cain, *Women Confined by Prison Bars and Male Images*, 18 TEX. J. WOMEN & L. 103 (2008)

Deborah M. Golden, *It's Not All in My Head: The Harm of Rape and the Prison Litigation Reform Act*, 11 CARDOZO WOMEN'S L.J. 37 (2004)

Rosemary Kennedy, *The Treatment of Women Prisoners After the VMI Decision: Application of a New "Heightened Scrutiny,"* 6 AM. U.J. GENDER SOC. POL'Y & L. 65 (1997)

Karen F. Lahm, *Equal or Equitable: An Exploration of Educational and Vocational Program Availability for Male and Female Offenders*, 64 FED. PROBATION 39 (2000).

Estalyn Marquis, *"Nothing Less Than the Dignity of Man": Women Prisoners, Reproductive Health, and Unequal Access to Justice Under the Eighth Amendment*, 106 CAL. L.R. 203 (2018)

Joseph Shapiro, Jessica Pupovac, & Kari Lydersen, *In Prison, Discipline Comes Down Hardest on Women*, ALL THINGS CONSIDERED (NPR broadcast Oct. 15, 2018), <https://www.npr.org/2018/10/15/647874342/in-prison-discipline-comes-down-hardest-on-women>.

Giovanna Shay, *Similarly Situated*, 18 GEO. MASON L. REV. 581 (2011)

Brenda V. Smith, *Sexual Abuse of Women in United States Prisons: A Modern Corollary of Slavery*, 33 FORDHAM URB. L.J. 571 (2006) https://papers.ssrn.com/sol3/papers.cfm?abstract_id=990079

Elizabeth Swavola, Kristine Riley, and Ram Subramanian, *Overlooked: Women and Jails in an Era of Reform*, Vera Institute of Justice (2016), https://storage.googleapis.com/vera-web-assets/downloads/Publications/overlooked-women-and-jails-report/legacy_downloads/overlooked-women-and-jails-report-updated.pdf

Texas Criminal Justice Coalition, *An Unsupported Population: The Treatment of Women in Texas' Criminal Justice System* (Apr. 2018), https://storage.googleapis.com/vera-web-assets/downloads/Publications/overlooked-women-and-jails-report/legacy_downloads/overlooked-women-and-jails-report-updated.pdf