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# JAIL BULLETIN

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NUMBER 17

MAY, 1986

The Jail Bulletin is a monthly feature of the Crime Commission Update. The Bulletin may be used as a supplement to your jail inservice training program if officers study the material and complete the attached "open book" quiz. The Bulletin and quiz may be reproduced for use by your staff. We welcome any jail training material you would like to contribute to the Bulletin.

## JAIL LITIGATION

Thirty percent of the 3,338 jails in the United States are either involved in a pending lawsuit or are under court order to improve conditions. Fortunately, Nebraska jails are being sued at a much lower rate than this. Most Nebraska jails do not suffer from overcrowding and inmate violence that plagues many large urban facilities. The jails in this state are usually clean, well administered, and staffed by trained professionals. Of the 81 Nebraska holding and detention facilities, 84% were in compliance with state jail standards as of April 18, 1986. Most of the jails that are not in compliance need corrective action on a few minor items.

The potential for a lawsuit exists at every jail. The real trick is to reduce the possibility that any lawsuit will be successful. The following article will give you some insight regarding why attorneys sue jails.

### "WHO ARE THESE PEOPLE AND WHY ARE THEY SUING US?"

Sometimes it seems that virtually every jail in the United States has been the subject of federal court civil rights litigation. Just taking the state of Arizona as an example, jail litigation has been brought against the facilities in Flagstaff, Phoenix, Tucson, and Yuma. Or taking New York State as an alternative example, to name just a few cases, there has been litigation against the Tombs, the Metropolitan Correctional Center in New York City, the Westchester County Jail, the Elmira Jail, the Orange County Jail, and the Monroe County Jail. The conditions cases are legion. And the damage actions are even more extensive. The cases are broad because the issues are ripe.

As the Honorable Irving R. Kaufman, Chief Judge of the United States Court of Appeals for the Second Circuit puts it,

Our society has not yet come to grips with the problems of prisons. Criminologists, sociologists, and psychologists appear to agree almost unanimously that prisons as they exist today have failed abysmally in either deterring crime or rehabilitating

criminals, and the conditions that often prevail in them are a blot on the conscious of a civilized nation. . . . since we must still imprison, we have at least become more sensitive to intolerable conditions to which many prisoners have been exposed. No longer can we abide the doctrine, embraced by courts of the nineteenth century, that a convicted inmate is temporarily a "slave of the state," devoid of all legal rights. Rather, we are aware that convicts, though deserving condemnation and punishment for their criminal behavior, are imprisoned for limited purposes. Both to treat prisoners justly and to preserve the possibility that they may successfully return to society, it is necessary that their essential human dignity be preserved.

The suits then are brought for two reasons: to effectuate changes in the conditions in the jails and to obtain money damages for an injured inmate. These cases are brought by a variety of lawyers. They include public interest lawyers and private practitioners in solo practice, small firms, and in large "Wall Street" firms.

Most of the conditions cases, however, are brought by "nonprofit" law firms of which there are a large variety. Perhaps best known is the National Prison Project of the American Civil Liberties Union located in Washington, D.C. whose executive director is Alvin J. Bronstein. The same organization also operates the National Jail Project. The Prison Project, of course, has been active in a number of cases including Ramos v. Lamm and litigation involving the state prisons in New Mexico and Arizona to name a few.

A variety of other public interest organizations also represent plaintiffs. While most public defenders are precluded from representing inmates in conditions litigation in other situations Legal Aid Societies which are "contract" public defenders, do represent inmates. One example is the prisoners rights project of the Legal Aid Society of the City of New York. Other nonprofit organizations include the Mexican American Legal Defense Fund, Prisoners Legal Services in New York State, and the Youth Law Center in San Francisco (This organization litigates on behalf of juveniles held in a variety of institutions including jails).

Finally, legal services programs funded by the Legal Services Corporation have handled a number of jail cases. For example, Community Legal Services in Phoenix, Arizona represented plaintiffs in Hart v. Hill, a case challenging conditions in the Maricopa County Jail, and Murden v. Phipps, involving the Yuma County Jail.

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Rumor has it that private practitioners handle condition cases for only three reasons: money, money, and money. That in fact is not correct because a private practitioner, particularly a plaintiff's personal injury lawyer, is likely to earn much more money handling private negligence matters. Nonetheless, as noted above, they do handle these kinds of cases and are entitled to attorneys fees as are public interest lawyers. Attorneys fees are provide by 42 U.S.C. 1988, commonly known as the Civil Rights Attorney's Fees Awards. That law provides that the prevailing party in a civil rights case is entitled to attorneys fees and costs including interim awards. Dependent upon the difficulty of the case and its lack of popularity, not only will the attorney be entitled to an hourly fee, but a "load star" may be added. This means that if the case is difficult enough and unpopular enough, the court may add additional monies as attorneys fees. Thus, while the cases are long and arduous, private practitioners do from time to time handle them.

Obviously of more interest to the private practitioner is the negligence case against the jail. Here, the test is simple negligence. These cases arise when an inmate is injured or dies while in custody. The only remedy sought is money damages. The traditional test to determine liability is one of negligence. There are four elements all of which have to be proved by the plaintiff. They include showing that the jail officials had a duty toward the inmate or pretrial detainee, that they breached the duty, that the breach of the duty was the proximate cause of the inmate's injuries, and that the inmate suffered damages. Such lawsuits sometimes, dependent upon state law, seek punitive damages. The difficulties with negligence cases are not that they are necessarily hard to prove. Rather, two other problems confront the plaintiff's lawyer. First is the possible limitation caused by state sovereign immunity laws. Some jurisdictions simply do not allow lawsuits against public officials, including jailers. Second, some states do not allow claims for punitive damages against public officials.

These two limitations -- sovereign immunity and punitive damages -- have caused many private practitioners to also bring damage actions based upon constitutional violations rather than, or in addition to, negligence claims. Here the test is more difficult to meet, particularly in light of several recent Supreme Court opinions.

On the conditions side, litigation has been proceeding at pace despite the Supreme Court opinions in Bell v. Wolfish and Rhodes v. Chapman. Here the plaintiff's attorneys' theories include violation of statutes, regulations, federal laws, and the Constitution. All are premised upon a violation of 42 U.S.C. 1983. These are systemic challenges in which the plaintiffs seek injunctions changing conditions in the jails.

While these cases take a long time to litigate and involve a substantial amount of costs in forms of depositions and expert witness fees, these costs, in addition to attorney's fees, are recoverable if the plaintiffs prevail pursuant to 28 U.S.C. 1920.

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Although most of these cases are brought in federal court, there is no statutory or other legal bar to their being brought to state court. In fact several pieces of jail litigation have been successfully brought in state court.

Regardless of whether they are brought in state or federal court, most of the cases are successful. Many private practitioners and public interests lawyers simply view the case as "winners". Given the combination of lack of proper funding of jails, the public's attitude toward inmates and therefore the attitude of the publicly elected officials (disregard of the needs of the jail agency, its staff, training, etc.), the financial and moral interests of public and private lawyers in litigating in this area, and the likelihood of continued injury to inmates in jails, the litigation is not going to stop.

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QUIZ

Nebraska Jail Standards require that jail staff receive eighteen (18) hours of inservice training each year. The Jail Bulletin may be used to supplement inservice training if an officer studies the bulletin, completes the quiz, and this process is documented by the jail administrator for review during annual jail inspections.

SUBJECT: JAIL LITIGATION

NAME \_\_\_\_\_

DATE \_\_\_\_\_

1. Jails in Nebraska are being sued at a rate higher than the national average.

TRUE

FALSE

2. What percent of Nebraska jails were in compliance with the state jail standards in April, 1986? \_\_\_\_\_

3. Most lawsuits involving unconstitutional conditions in a jail are brought by \_\_\_\_\_ law firms.

4. What is a "load star"? \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

5. Most jail lawsuits are successful.

TRUE

FALSE

CREDIT: 1/2 HOUR CREDIT FOR JAIL INSERVICE TRAINING REQUIREMENT

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1. Jails in Nebraska are being sued at a rate higher than the national average.

TRUE

FALSE XXX

2. What percent of Nebraska jails were in compliance with the state jail standards in April, 1986? 84%

3. Most lawsuits involving unconstitutional conditions in a jail are brought by NONPROFIT law firms.

4. What is a "load star"? ADDITIONAL ATTORNEY FEES GRANTED BY THE COURT FOR A DIFFICULT OR UNPOPULAR CASE
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5. Most jail lawsuits are successful.

TRUE XXX

FALSE

CREDIT: 1/2 HOUR CREDIT FOR JAIL INSERVICE TRAINING REQUIREMENT

ANSWER SHEET SHOULD BE RETAINED BY JAIL ADMINISTRATOR OR TRAINING OFFICER