

# JAIL BULLETIN

Number 80

October, 1991

## Legal Issues in Corrections, Part 2

### The "Hands Off" Era

Prior to the 1960's, the courts refused to involve themselves in correctional matters for several reasons:

**SEPARATION OF POWERS** -- The courts strongly defended the position that corrections was an activity of the executive branch of the government. It was not appropriate--and was, indeed, a violation of the U. S. Constitution--for the court to intervene.

**LACK OF JUDICIAL EXPERTISE** -- The courts took the position that they lacked the knowledge and skill to determine how correctional institutions should be constructed or managed.

**"SLAVE OF THE STATE" DOCTRINE** -- The courts took the position that ALL persons in custody should lose both their rights and privileges because they were charged with or convicted of a crime.

**INSTITUTIONAL SECURITY AND DISCIPLINE** -- The courts took the position that their intervention might jeopardize security and that persons incarcerated should be disciplined.

The following cases illustrate the "Hands-Off Era":

1948 - In PRICE V. JOHNSTON, the U.S. Supreme Court stated, "Lawful incarceration brings about the necessary withdrawal or limitation of many privileges and rights, a restriction justified by the considerations underlying our penal system".

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1951 - In *Ex Parte Pickens*, a U. S. district court ruled that even though the conditions in the jail were deplorable and in spite of the fact that Pickens was a pre-trial inmate:

1. Solving the problems was beyond the authority of the court;
2. Additional funds had been unsuccessfully appropriated;
3. The jail was the only holding facility near the place of trial; and
4. The conditions imposed on Pickens would not be deemed cruel and unusual punishment when compared to the conditions suffered by combat troops in Korea.

## **The Era of Judicial Intervention**

During the late 1960's and early 1970's, the attitude of courts toward corrections began to change. This era has been characterized as one of limited involvement. At this point, Section 1983 actions began to assume prominence in correctional litigation. In a number of Section 1983 cases, the United States Supreme Court applied the constitutional prohibition of "cruel and unusual punishment" to correct inhumane conditions.

In 1971, prisoner riots erupted at the New York State Penitentiary in Attica, New York. This single event, more than any other, brought an end to the "hands Off" era and precipitated wholesale court intervention into corrections operations.

Following the Attica riots, and the report on Attica issued in 1973, these events occurred:

1974 - In *Wolff v. McDonnell*, the U.S. Supreme Court ruled that prison inmates are entitled to limited due process rights in prison disciplinary proceedings.

1976 - Congress passed Section 1988, an addendum to the Civil Rights Act

1978 - In *Monell v. Dept. of Social Services*, the U.S. Supreme Court changed the prior rule that a city or county could not be liable as a "person" under Section 1983. The court ruled that a city or county may be liable if:

- 1) Its employees engaged in a pattern or custom of unconstitutional conduct, or the city/county had a policy which is unconstitutional;
- 2) City/county officials knew or should have known of the unconstitutional pattern, custom or policy; and
- 3) the officials did nothing to correct it.

Monell provided the motivation for attorneys to bring prisoner rights suits based on Section 1983. A city, county or state has a "deep pocket"; the attorney of a prisoner who won his case would be certain to get his attorney's fees. Thus at least one in every seven cases heard in federal district courts is a prisoners rights case. (Source: Bureau of National Accounting Report.)

These challenges to prison and jail conditions and treatment are based on the following amendments to the U.S. Constitution:

**FIRST AMENDMENT** -- Guarantees freedom of religion and access to mail and library.

**SIXTH AMENDMENT** -- Guarantees prisoner due process rights, including rights to legal representation.

**EIGHTH AMENDMENT** -- Bans the use of cruel and unusual punishment.

**FOURTEENTH AMENDMENT** -- Guarantees equal protection under the law and, by doing so, extends all other amendments to the states.

Prisoner rights cases have touched upon nearly every aspect of corrections, including the following:

- » staffing
- » access to courts and counsel
- » mail and telephone
- » library and (particularly) law library
- » reading materials
- » religion
- » visitation and media visits
- » medical care
- » enforced idleness
- » recreation
- » food service
- » education and vocational opportunities
- » behavior modification
- » classification and segregation
- » discipline, due process and grievance procedures
- » living conditions

# QUIZ

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

SUBJECT: LEGAL ISSUES IN CORRECTIONS, PART 2

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NAME \_\_\_\_\_

DATE \_\_\_\_\_

1. The concept that incarcerated persons lost their rights and privileges because they were charged with or guilty of a crime is called the: \_\_\_\_\_

2. Prior to 1978, a county could not be held liable for a 1983 action because it was not considered to be a "person".

TRUE FALSE

3. At least one in every seven cases heard in federal courts is a prisoner rights case.

TRUE FALSE

4. Match the amendment with the subject it covers:

\_\_\_ First Amendment

A. Bans Cruel and Unusual Punishment

\_\_\_ Sixth Amendment

B. Freedom of Religion

\_\_\_ Eighth Amendment

C. Guarantees Due Process

\_\_\_ Fourteenth Amendment

D. Guarantees Equal Protection Under the Law

CREDIT: 1/2 hour credit for Jail Inservice Training requirement.

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