

N E B R A S K A

JAIL BULLETIN

JUNE/JULY 1997

NUMBER 135

The *Jail Bulletin* may be used as a supplement to your jail in-service training program. If officers study the material and complete the attached "open book" quiz, they may receive **one hour of credit**. The bulletin and quiz may be reproduced for staff use as necessary. *We welcome any material you would like to contribute to the "Jail Bulletin"*.

CIVIL LIABILITIES, UNCONSTITUTIONAL JAIL AND PLANNING OF NEW INSTITUTIONS PART I

A background for the PONI Program of the NATIONAL INSTITUTE OF CORRECTIONS Jail Center, Longmont, Colorado.

I. INTRODUCTION

Our nation is facing an unprecedented crisis in the need for new jails. The crisis is not just a legal crisis, although it has been spurred by the courts' heightened legal standards for constitutionally acceptable conditions of confinement. The crisis is not just an administrative crisis, although sheriffs, jailers, and wardens have been held personally liable for millions of dollars in damages in prisoner law suits. The crisis is real—the federal courts will no longer tolerate antiquated, inhumane jails which contribute to jail inmate violence, suicide, and death. Ultimately, the taxpayers will pay billions to rebuild and staff these jails according to these new "constitutional" standards.

The following facts illustrate the magnitude of our jail crisis:

The contents of the *Jail Bulletin* represent the views of the author(s) and do not necessarily reflect official views or policies of the Nebraska Crime Commission or the Nebraska Jail Standards Board.

- 2) the failure to perform early planning activities;
- 3) the failure to consider operational costs during the planning process;
- 4) the failure to gather data about critical planning issues;
- 5) the failure to do adequate pre-architectural programming;
- 6) the failure to educate the public;
- 7) the failure to make system-level policy decisions; and
- 8) the failure to understand the nature of the criminal justice system.

See D. Voorhis, “Seven Stumbling Blocks to Effective Jail Planning.”

There are jurisdictions which have successfully developed new local detention facilities. One reason for their success is that they became aware of constitutional issues in jail construction and used a systematic planning process which involved all the elements of the criminal justice system and the community. Second, they took the time to plan. Finally, the operators of the building and policy makers for the jurisdiction did not relegate decisions to the architect at the drafting table, but rather worked together with the architect to develop a facility that would meet their needs.

In other words, when planning a new jail or reviewing the adequacy of an old jail, “prevention is better than cure.” The best course is to plan or review with possible legal issues in mind. Careful planning of a new facility can avoid the tremendous and unnecessary cost of rebuilding because of unconstitutional conditions. Today public officials must be proactive rather than reactive—“Think prevention.”

II LEGAL BACKGROUND

Terms to Know

Our current jail crisis cannot be fully understood without an understanding of how courts became involved in setting minimum constitutional requirements for jails. The following terms are essential to understanding this legal background:

SECTION 1983 OF THE CIVIL RIGHTS ACT OF 1871—This statute is part of the post-Civil War legislation and originally did not pertain to corrections, but instead was applied to the civil rights of recently freed slaves. Section 1983, which is part of Title 42 of the United States Code, states:

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, one in every seven cases heard in federal district courts is a prisoner rights case. (Source: Bureau of National Accounting Report.)

The 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.

EIGHT 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

Obviously, each of these categories has a significant impact upon the design of a jail facility. In fact, a new facility inadequate in any of these areas might be found unconstitutional by the federal courts.

National Standards for Jails, and *Bell v. Wolfish*

In response to the intense prisoners' rights litigation, several organizations developed national standards for prisons and jails. These organizations include, but are not limited to:

- The American Corrections Association
- The National Sheriffs Association
- The American Medical Association
- The American Bar Association
- The American Public Health Association

The American Corrections Association (ACA) standards, which were widely accepted in the corrections field, included the following minimum standards:

- pre-trial detainees' entitlement to greater rights than convicted inmates;
- no double ceiling; and
- minimum square footage requirements per cell.

Other standards which had a major impact on correctional facilities included local building codes, local health and sanitation codes, and the National Fire Protection Association Codes.

In 1979, in *Bell v. Wolfish*, the U.S. Supreme Court called into question the constitutional validity of national correctional standards for double ceiling, square footage, search procedures, etc. *Wolfish* was an inmate at a New York pre-trial detention facility called the Metropolitan Correctional Center. The Supreme Court ruled, among other things, that:

- 1) pre-trial detainees are **not** entitled to greater rights than sentenced inmates;
- 2) restrictions on pre-trial detainees are permissible, so long as they are needed for effective management of the detention facility, and the restriction is rationally related to a legitimate governmental purpose;

- 3) double celling, when combined with adequate living space outside the cell, is not unconstitutional; and
- 4) minimum square footage does not, by itself, determine the constitutional validity of a cell.

Furthermore, *Bell v. Wolfish* abandoned the old rule that the presumption of innocence entitle to pretrial detainees meant that their conditions of detainment must be the least restrictive alternative. The court stated that although a pretrial detainee is presumed to be innocent for purposes of a criminal trial, this presumption of innocence “has no application to a determination of the rights of a pretrial detainee during confinement before his trial has even begun” (Emphasis added).

The Court declined to give constitutional validity to the correctional standards promulgated by the American Correctional Association, the American Public Health Association, the National Sheriffs’ Association, or others, stating:

“While the recommendations of these various groups may be instructive in certain cases, they simply do not establish the constitutional minima; rather, they establish goals recommended by these organizations.”

However, the Court did not retreat from the past standards it and the lower federal courts had set in this field of inmate rights. The Court simply refused to make the “advanced correctional practices” of the ACA and other groups’ “constitutional minima”. Many public officials and architects are still confused over this case, but it is certainly not a movement back to the former “hands off” policy.

SUMMARY

In summary, the courts are extensively involved in the field of corrections, and it does not appear likely that their influence will decrease. While rulings on particular cases may vary from court to court, the broad precedents are clearly established. Given what we know about court involvement, public officials involved in planning new jails or evaluating old ones should take the first step in meeting constitutional standards before a lawsuit is filed. Be proactive, not reactive; this is a case where prevention is better than cure.

Material prepared by Lynn J. Lund, Mark J. Morrise and Alton Jordan for NIC. Reprinted with permission from the National Institute of Corrections, Longmont, Colorado. If you or your agency wish to contribute to the *Jail Bulletin* or have a special subject to be addressed through the bulletin, please contact: Jail Standards Division, P.O. Box 94946, Lincoln, Nebraska 68509-94946, Telephone 402-471-3710, FAX 402-471-2837.

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 annual jail inspections.

JUNE/JULY 1997

NUMBER 135

**SUBJECT: CIVIL LIABILITIES,
UNCONSTITUTIONAL JAIL AND
PLANNING OF NEW INSTITUTIONS
PART I**

NAME: _____

DATE: _____

1. What is the federal statute inmates use to file suit against local jails and officials?
2. Section 1988 of the federal statutes provides that: The prevailing party (in a law suit) may receive reasonable attorney fees.
 - a. True
 - b. False
3. The term the courts have used in the presumption that every public official knows constitutional law and is required to take positive steps to discharge that duty is called:
 - a. personal liability
 - b. administrative liability
 - c. affirmative duty
 - d. official liability
4. A period of time in our history in which the courts did not involve themselves in prison and jail matters has been frequently referred to as the:
 - a. separation of powers doctrine
 - b. hands off era
 - c. non intervention doctrine
 - d. slave of the state era
5. In the late 1960's and early 1970's the era of limited judicial involvement began.
 - a. True
 - b. False
6. In Monell v. Department of Social Services, the U.S. Supreme Court decided that:
 - a. sentenced inmates were slaves of the State
 - b. a City or County could be liable under Section 1983
 - c. inmates were to be provided due process
 - d. government employees were exempt from liability

7. Prison and jail conditions and treatment are generally challenged under which constitutional amendments (list them)?

- a.
- b.
- c.
- d.

8. List 5 aspects of corrections in which prisoner rights cases have had involvement:

- 1.
- 2.
- 3.
- 4.
- 5.

9. According to Bell v. Wolfish, restrictions on pretrial detainees' rights are permissible when:

- a. It is needed for effective management of the detention facility.
- b. The restriction is related to available funding and resources.
- c. The restriction is rationally related to a legitimate governmental purpose.
- d. The facility lacks the adequate numbers of trained staff.
- e. A and B
- f. A and C

American Corrections Association Standards were excepted by the U.S. Supreme Court as "constitutional minima."

- a. True
- b. False

QUIZ

Answer Sheet

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 annual jail inspections.

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Section 1983 of the Civil Rights Act of 1871
2. Section 1988 of the federal statutes provides that: The prevailing party (in a law suit) may receive reasonable attorney fees.
 - a. **True**
 - b. False
3. The term the courts have used in the presumption that every public official knows constitutional law and is required to take positive steps to discharge that duty is called:
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 - b. administrative liability
 - c. **affirmative duty**
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6. In Monell v. Department of Social Services, the U.S. Supreme Court decided that:
 - a. sentenced inmates were slaves of the State
 - b. **a City or County could be liable under Section 1983**
 - c. inmates were to be provided due process
 - d. government employees were exempt from liability

7. Prison and jail conditions and treatment are generally challenged under which constitutional amendments (list them)?

- a. **First Amendment**
- b. **Sixth Amendment**
- c. **Eighth Amendment**
- d. **Fourteenth Amendment**

8. List 5 aspects of corrections in which prisoner rights cases have had involvement:

Options

- | | |
|--|---|
| 1. staffing | 10. recreation |
| 2. access to courts and counsel | 11. food service |
| 3. mail and telephone | 12. education and vocational opportunities |
| 4. library and (particularly law library) | 13. behavior modification |
| 5. reading materials | 14. classification and segregation |
| 6. religion | 15. discipline, due process and grievance |
| 7. visitation and media visits | 16. procedures |
| 8. medical care | 17. living conditions |
| 9. enforced idleness | |

9. According to Bell v. Wolfish, restrictions on pretrial detainees' rights are permissible when:

- a. It is needed for effective management of the detention facility.
- b. The restriction is related to available funding and resources.
- c. The restriction is rationally related to a legitimate governmental purpose.
- d. The facility lacks the adequate numbers of trained staff.
- e. A and B
- f. A and C

10. American Corrections Association Standards were excepted by the U.S. Supreme Court as "constitutional minima."

- a. True
- b. False