

JAIL BULLETIN

Number 79

September, 1991

Legal Issues in Corrections, Part I

Unconstitutional Jails: A National Crisis

Our nation is facing an unprecedented crisis in the need for 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 inmate 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.

Legal Background

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:

"Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory... subjects, or causes to be subjected, any citizen of the United States or other person within the Jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress."

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Approximately fifteen years ago only 218 civil rights law suits were filed in the federal courts. Today the Bureau of National Affairs (BNA) reports that more than one out of seven lawsuits filed in a prisoner rights section 1983 action. As previously mentioned, today one out of three jails in that nation is presently under court order or has lawsuits pending under Section 1983.

SECTION 1988 -- This statute, which is also part of Title 42 of the United States Code, was passed in 1976. It provides that the “prevailing party may receive reasonable attorney’s fees” as part of the costs, to be paid by the losing party.

Under Section 1988, the judge in his discretion may put a multiplier on the plaintiff’s attorney fees, depending on the attorney’s expertise and creativity, and the effect of the case on Section 1983 law.

Examples:

Ruiz v. Estelle, (Ct. App. 1983) - **\$1.6 million** in attorney fees

Ramos v. Lamm, (Dist 1979, Ct. App. 1983) - **\$800,000** in attorney fees

Cherco v. Sonoma County, (1985) over **\$2 Million** in combined attorney fees

Further, the plaintiff is entitled to attorney’s fees for all that the jail staff do to correct an unconstitutional facility after the lawsuit is filed. This is called the “catalyst effect”.

OFFICIAL LIABILITY -- A public official, when found liable in his official capacity, does not have to pay damages or attorney fees if he loses the suit. His “official liability” is automatically indemnified by the governmental unit (city, county or state) that employs him. Brandon v. Holt (1985)

PERSONAL LIABILITY -- A public official may also be found liable as a private individual. If so, he is “personally liable” for damages and attorney’s fees. Depending on local and state law, the governmental unit that employs him may indemnify him totally, partially, or not at all. Williams v. Bennett (Ct. App. 1982), Smith v. Wade (U.S. S. Ct. 1983)

ADMINISTRATIVE LIABILITY -- An administrator may be personally liable for the misconduct of his subordinates if he was aware of a pattern of misconduct but failed to stop it. McClelland v. Facticeau (Ct. App. 1979). He also may be liable if he had an affirmative duty to train and supervise the subordinates, but failed to do so.

AFFIRMATIVE DUTY -- The law presumes that every public official know constitutional law and is required to take positive steps to discharge that duty, to comply with constitutional standards in the daily, routine course of their business affairs. For example, officials must know and comply with the constitutional standards of jail construction and inmates rights. Smith v. Wade (1983)

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 1

SEPTEMBER, 1991

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NAME _____

DATE _____

1. Section 1983, Title 42 of the U.S. Code was originally applied to what group?

2. Section 1988, Title 42 of the U.S. Code allows for attorney fees to be paid by _____

3. The concept of affirmative duty requires that public officials must know the law.

TRUE FALSE

4. List the three types of liability given

1. _____

2. _____

3. _____

5. Failure to train subordinates if an affirmative duty exists to do so could result in _____ liability.

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2. PERSONAL LIABILITY

3. ADMINISTRATIVE LIABILITY

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