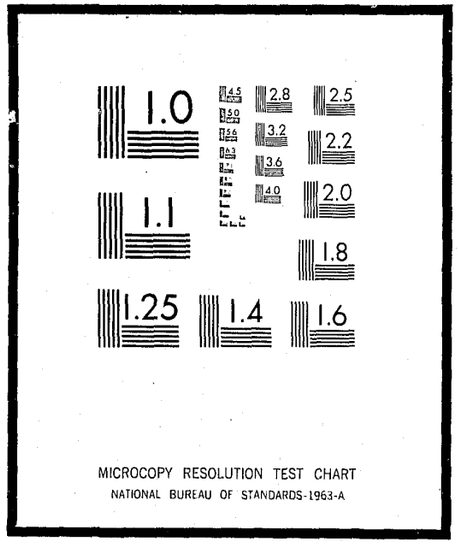
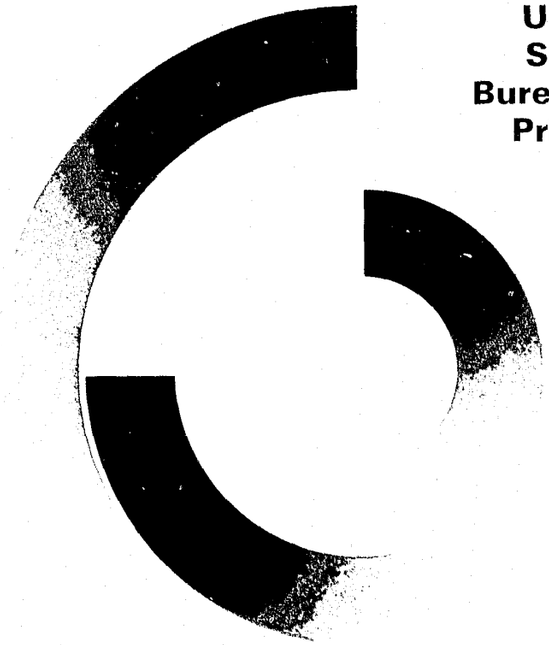


Jail Management

A Course For Jail Administrators

Independent Study: Book 5: Legal Problems

United States Bureau of Prisons



Jail Management

A Programmed
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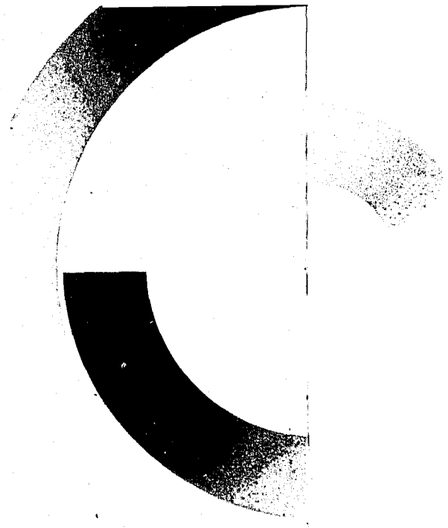
The Jail:
Its Operation
and Management



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CONTENTS

Preface

This course is for jail officers. It was written to help them assume the difficult and challenging demands of jail work. The course emphasizes that, in addition to the routine tasks which officers must learn to perform in the jail, they must also be fully prepared to serve an important function for society as well-trained, responsible professionals. Much of the jail officer's job will depend on his ability to make important decisions and to avoid the mistakes and disproven beliefs of the past. The course material includes discussions of mistakes which other men and women have made on the job; it is hoped that jail officers can learn from these things and avoid making the same errors. Naturally, there can be no substitute for actual on-the-job experience. But it is hoped that by participating in this course, jail officers will be better prepared to perform in a professional, competent manner on the job than if they were required to learn only "by doing".

Alice H. Blumer
Madison, Wisconsin

Acknowledgement

The author is indebted to Captain Otis R. Lund, Sgt. Gordon J. Butler, and Deputy Edward C. Pohlman of the Dane County Jail who supplied important background details to supplement these pages and answered the author's numerous questions.

During the evaluation period, the following people devoted their time and effort to reading and responding to the material:

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Upper Marlboro, Maryland

Note to the Reader

This course has been developed to permit you to participate in decision-making and problem solving while you proceed through the material. To participate in this type of course, all you have to do is read carefully, follow instructions and complete each section. You cannot use this course like a magazine, that is, opening at the middle and flipping through the pages. It is very important that you *begin at the beginning* and read all the material. You will see that, throughout the course, when you read some material, you will be asked to respond to written questions and then check your answer by comparing it to the printed answer appearing on the following page. In some sections, you will be asked to read a case study and then formulate solutions to problems presented in the study. Do not hesitate to write in the book whenever you are asked to, and, if you are having any difficulty, simply re-read the pertinent material. It is strongly recommended that, whenever possible, you talk to at least one other person about the material in the case studies as they relate to local conditions and problems. (Naturally, a classroom discussion with other jail administrators would be ideal.) If you do this, it is inevitable that the material will become more relevant to both of you and will be more useful to you in your work. We think you will enjoy learning in this manner, and hope that you will finish the course with a feeling of pride in your profession and confidence in your ability to function as a competent jail administrator.

BOOK FIVE: LEGAL PROBLEMS

INTRODUCTION

Lawful incarceration must, of necessity, withdraw or limit many of the individual rights to which the average person is entitled. Most basic of these is the right to personal liberty. However, increasing concern for the rights of offenders has changed the concept of what restrictions and conditions may be appropriately placed on persons who are in pretrial detention or serving terms of imprisonment. No longer can institutional authorities do whatever they wish without fear of criticism, censure, or judicial intervention, because the courts no longer ignore prisoners' complaints. Similarly, jailers are no longer given unbridled discretion in dealing with prisoners assigned to their care and are, in fact, professionally committed to giving prisoners their rights under the law.

Preservation of those rights to which a prisoner is entitled is not only a professional duty for the jail officer and administrator, it is also a matter of self interest. For, in fact, in a growing number of states the doctrine of immunity to civil suits by prisoners is being changed by statute or by court decision. Jail officers and muncipalities are no longer immune to charges against them by prisoners who claim that they have been deprived of essential rights. This chapter was developed to inform jail administrators of their legal responsibilities to their prisoners and to serve as a guideline for jail administrators who must make important policy decisions which affect their prisoners.

Essential to any confinement program is the concept that, once a person is in the custody of a sheriff or jailer and is helpless to protect himself, the local government has the responsibility of exercising due care for his safety and general welfare. Traditionally, public officials were protected from lawsuits by the courts which refused to interfere in prison administration. However, it is now true that when courts see that a specific legal obligation has been allegedly violated, they often agree to consider the prisoner's complaint.

According to the courts, the jailer's legal obligation to *look after the general welfare of all prisoners* includes the following important functions:

- protection of the prisoners from injury by fellow prisoners
- protection of prisoners from negligent or intentional harm by sheriffs, jailers, and deputies
- protection of the prisoners from possible injury to themselves
- provision of adequate treatment, food, clothing, and shelter

To what extent must the sheriff or jailer *protect his prisoners from others?* He must take great care to see that:

- each prisoner is carefully searched and dangerous weapons or items are taken away before the prisoner is locked up
- known dangerous prisoners are segregated from the rest of the prisoner population
- known prisoner pressure groups and mistreatment practices are eliminated from the jail

> In one legal case, a prisoner held in county jail was attacked, cut and stabbed with a knife by another prisoner who was believed to be insane. The knife wielder had not been searched when taken into custody by the deputy sheriff and had been placed in a cell with the other prisoner in spite of his known dangerously insane condition. The court held the sheriff liable for the negligent acts of his deputy.

This deputy failed to exercise great care in looking after the welfare of his prisoners. In doing so, he was responsible for negligence. The negligent acts he committed were: (choose the correct answers)

___ 1) Failing to segregate the man who was known to be insane
___ 2) Failing to warn the other prisoner that his cellmate was insane
___ 3) Failing to warn the prisoner that his cellmate was armed with a knife
___ 4) Failing to search the new prisoner thoroughly before locking him up

Turn page to check your answers . . .

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Answer:

X 1) Failing to segregate the man who was known to be insane
___ 2) Failing to warn the other prisoner that his cellmate was insane
___ 3) Failing to warn the prisoner that his cellmate was armed with a knife
X 4) Failing to search the new prisoner thoroughly before locking him up

---

In commenting on its decision, the court which considered the case explained in the following manner why the sheriff was held liable to the wounded prisoner for the negligence of his deputy:

> Hence it is plain that the sheriff's duties in regard to prisoners or others in his lawful custody are twofold, one, to the state to keep and produce the prisoner when required, and the other, to the prisoner to keep him in health and safety.[1] . . .
>
> In the case of the sheriff, both by statute and at common law . . . he owes the direct duty to a prisoner in his custody to keep him in health and free from harm and for any breach of such duty resulting in injury he is liable to the prisoner.[2]

> In another legal case, a prisoner's widow brought suit against a sheriff alleging that he was liable for the death of her husband in jail. The woman claimed that her husband was in a weak, sick, and helpless condition when he was incarcerated in the county jail. Further, she charged that he was locked in a cell with a man known to be violently insane and was then abandoned. During the night the prisoner was assaulted by the insane man and beaten with a table leg torn from a table that had been left in the cell by jailers. After being beaten, the prisoner was left unattended in the cell and died the next morning without having regained consciousness.[3]

The court found this sheriff liable to the prisoner's widow for negligence. What was the sheriff's legal duty to the prisoner which he clearly overlooked in this case?

Turn page to check your answer . . .

Answer:

The sheriff had a legal responsibility to his prisoner to SEGREGATE THE MAN WHOM HE KNEW TO BE VIOLENTLY INSANE.

It is clearly the sheriff's duty to see that such precautions are taken to protect his other prisoners; if his deputy or jailer fails to fulfill this duty for the sheriff, the sheriff can be held liable for negligence.

Still another legal case dealt with the legal responsibility of the sheriff in protecting prisoners from others. A man was arrested for drunkenness and was subsequently locked up in a cell with a group of prisoners by the sheriff's deputy. Soon afterwards, the man was assaulted by the others and beaten cruelly with a blackjack which one of the prisoners carried. The prisoner died as a result of his wounds.

The court found the sheriff liable for the negligence of his deputy. In what way do you consider the deputy had clearly been negligent?

Turn the page to check your answer . . .

Answer:

The deputy had *failed to search the prisoners* and had therefore allowed them to keep a blackjack in the cell. In holding the sheriff liable for the negligence of his deputy, the court pointed out the following:

> If a jailer whose duty it was to care for and protect the prisoners from harm, would have in the exercise of ordinary care, discovered the presence of weapons and removed them . . . he would be responsible in damages for having failed [to have performed a search][4]

As mentioned earlier, the sheriff or jailer's duty to protect his prisoners from others extends to *eliminating and prohibiting known prisoner pressure groups and mistreatment practices from the jail.*

> An Oklahoma court considered the following case: A prisoner named Cupp was arrested and, unable to pay bail, was confined in the county jail. While he was there, he was tried in a mock trial by the prisoners confined there, in a "kangaroo" court, and a fine of 50¢ was assessed against him by the other prisoners. Upon his refusal to pay the fine he was assaulted and beaten. During the trial it was found that the prisoners in the jail did this customarily to all new prisoners and that the sheriff knew of the custom and took no steps to put a stop to it. The court awarded money damages to Cupp as a result of the trial and stated that the prisoner was forced to depend on the jailer for safety and that the jailer had violated his duty to protect the prisoner in his care.[5]

Thirty one years later, the same principle was upheld in another legal case:

> A prisoner, William Ratliff, was brought to a county jail and placed among a number of other prisoners who subsequently beat and bruised him and took all his money. It became clear during the trial that for many months prior to Ratliff's incarceration the prisoners in this jail had maintained a "kangaroo court" for the purpose of initiating new prisoners, demanding fees from them and assaulting and robbing them. It also became clear that the sheriff knew of this custom and had permitted it to continue for a number of months and had taken no steps to protect prisoners from such a practice. In fact, he had encouraged and permitted the members of the organization to beat and rob Ratliff.

In concluding this case, the court held that "the law imposes a duty on the sheriff to exercise reasonable care and diligence to prevent unlawful injury to a prisoner placed in custody, but he cannot be charged with negligence in failing to prevent what he could not reasonably anticipate."[6]

In view of this statement by the court, do you think that this sheriff could have been held liable if it had been proved that he had not known of, or encouraged, the "kangaroo" court previously?

Turn page to check your answer . . .

Answer:

No. In both the Ratliff case and in the case mentioned before it, the key element was the *knowledge of the sheriff or jailer that the kangaroo court existed and his apparent acquiescence in it.*

The general rule that has grown out of these and similar cases is that in order for an officer in charge of a jail or prisoner to be held liable for an injury inflicted upon one prisoner by another prisoner, there must be *good reason to anticipate danger and there must be negligence in failing to prevent the injury.*

Before continuing your reading, see if you can complete the following statement:

In carrying out his duty to protect his prisoners from other prisoners, a sheriff or jailer must take great care to see that:

1. _____

_____

2. _____

_____

3. _____

_____

Turn the page to check your answers . . .

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Answers:

In carrying out his duty to protect his prisoners from other prisoners, a sheriff or jailer must take great care to see that:

1) each prisoner is carefully searched and dangerous weapons or items taken away before the prisoner is locked up
2) known dangerous prisoners are segregated from the rest of the prisoner population
3) known prisoner pressure groups and mistreatment practices are eliminated from the jail

---

To what extent is the sheriff or head jailer responsible for protecting his prisoners from *dangerous conditions?*

> In one legal case, the court held that the sheriff has a duty to protect each prisoner from harm and can be held personally liable for negligence or wrongful acts causing injury or death. In this case, a prisoner was found suffocated in his cell by smoke from a burning mattress. Because of the way in which the cell was constructed, there was no way that the prisoner could give the alarm or otherwise communicate with anyone. The jailer was negligent because, although he knew of the limitations of this cell, *he had no regular schedule for checking on prisoners in their cells and had no facilities for handling a fire.*[7]

It is apparent that a *special relationship* exists between an officer and the prisoner in his custody. The prisoner is wholly dependent on the officer for his health and safety while in custody, and for this reason, it is essential that a high standard of care be maintained in each jail. This standard of care has been stated by a court in the following manner:

> A sheriff owes to a prisoner placed in his custody a duty to keep the prisoner safely and free from harm, to render him medical aid when necessary, and to treat him humanely and refrain from oppressing him; and where a sheriff is negligent in his care and custody of a prisoner and as a result the prisoner receives injury or meets his death, or where a sheriff fails in the performance of his duty to the prisoner and the latter suffers injury or meets his death as a result of such failure, the sheriff would, in a proper case, be liable on his official bond, to the injured prisoner or to his dependents as the case may be.[8]

Consider the following legal case:

> An intoxicated prisoner was incarcerated in a city jail after being charged with public drunkenness and disorderly conduct. The officer who received the prisoner locked him in a cage-like cell which provided no means for escaping and was located in a small 12 x 14 foot room which had only two windows by which fresh air could enter. The officer knew of the prisoner's intoxicated condition but, nevertheless, locked him in the cell with matches and a lighted cigarette in his possession. The officer then left the man alone in a helpless and partially unconscious condition and made no attempt to check on him later or provide medical attention or an examination for him. While the prisoner was unattended, the mattress in his cell caught fire and filled the cell and the surrounding room with smoke. The windows of the room were closed and there was no way for fresh air to enter and smoke from the fire to escape. Consequently, the prisoner began to suffocate. Approximately three hours after he had locked up the prisoner, the officer returned to the jail and discovered the smoke and fire. He then opened the doors and windows of the jail, got a fire pump started and began to pump water on the burning mattress. At no time did he attempt to remove the prisoner from the cell. The water increased the amount of smoke, thus endangering the prisoner further. When other persons arrived about five minutes later, and one man attempted to rescue the prisoner, the officer interfered with the rescue attempt and prevented removal of the prisoner for about 10 minutes until someone rescued the prisoner in spite of the officer's interference. By the time the prisoner was removed, the exposure to the fire and smoke had killed him.[9]

In holding that the officer was, in fact, liable for negligence, the court emphasized that the officer had a duty to "use reasonable care to prevent harm" since *he had the knowledge that the prisoner could harm himself or others* unless preventative measures were taken.

In this case, what do you think would have been considered "reasonable care" on the officer's part?

Turn page to check answer . . .

Answer:

"Reasonable care" would have consisted of removal of the dangerous articles (lighted cigarette and matches) by the officer, frequent cell checks by the officer or another officer, and possibly, a medical examination requested by the officer who had been well aware of the man's partially unconscious state. In fact, in some jails with strict rules for admission, this prisoner would not even have been admitted without first having been checked by a doctor. If such reasonable care had been taken, the officer would not have found himself liable for the death of the prisoner in his charge.

To what extent must a jailer be responsible for providing adequate food, clothing, shelter and medical care to his prisoners?

In accordance with the concept that a prisoner is, in effect, forced to depend on the jailer for his health, safety and welfare, the courts have found sheriffs liable for injuries resulting from failure to supply prisoners with adequate food, clothing, heat and shelter. Decisions have also been made holding jailers liable for unsanitary conditions in their jails. The following is a typical case dealing with just such an issue:

> A female prisoner charged that after being unlawfully arrested, she was locked in a flooded cell. She further alleged that the cell was cold and totally "unfit for occupancy". In addition, her bedding was filthy and insufficient, thereby causing her extreme discomfort and eventual illness. The plaintiff further charged that, although there were other cells on other floors which were in good condition and contained clean and sufficient bedding, she was denied access to them by the sheriff.

In finding the sheriff liable for his failure to provide adequate conditions for the prisoner during her incarceration, the court stated:

> The whole affair from beginning to end seems to have been an outrageous performance by those claiming to represent the majesty of the law, too flagrant for any justification on any theory of guilt.[10]

While courts are careful to state that the "luxuries of life" need not be provided to prisoners, they are equally careful to state that *ordinary and decent care* must be provided. Courts have further held that it is a sheriff or jailer's duty to exercise reasonable and ordinary care to protect the prisoner's life and health.[11] Court decisions have held that once a jailer has accepted a prisoner into his charge, he is responsible for protection of the prisoner's health. In some jurisdictions, jailers are enabled to refuse admittance to an injured or ill prisoner until the accompanying officer has sought medical help for the prisoner. Naturally, in such cases, the jailer is able to avoid personal liability by ensuring that adequate medical attention has been given before the prisoner is allowed to enter the jail. However, other jurisdictions make it a legal obligation to accept all prisoners, no matter what their physical condition. In such cases, it becomes the immediate duty of the jailer to see that any injured or ill prisoners receive adequate medical attention. A typical example of the courts' insistence on adequate medical care is the following case:

> A Tennessee sheriff brought a wounded prisoner to his jail and locked him in a cell. While the prisoner was there, the sheriff made no attempt to summon medical help or provide any other assistance to the injured man. The prisoner died of his wounds and the sheriff was held legally liable for negligence leading to the man's death.[12]

> A Mississippi court was presented with a case in which the widow of a prisoner who had been kept in a county jail alleged that her husband's death was attributable to the negligence of the sheriff in not supplying medical care to her husband. The court was presented with evidence that showed that, when the man became a prisoner, he was suffering from stomach ulcers. His condition, upon entering the jail, required medical aid and proper food. The sheriff repeatedly refused all such requests and, as a result, the prisoner's condition became aggravated and led to greater complications and eventual death.

The court upheld the liability of the sheriff and cited the following principle:

> When a sheriff by virtue of his office has arrested and imprisoned a human being he is bound to exercise ordinary and reasonable care under the circumstances of each particular case, for the preservation of his life and health. This duty of care is one owing by him to the person in his custody by virtue of his office, and for a breach of such duty he and his sureties are responsible in damages of his official bond.[13]

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In the case just outlined, the court aligned itself with those jurisdictions which hold jailers liable for failure to exercise ordinary and reasonable care to preserve the life and health of their prisoners.[14] Other jurisdictions have said they would hold the sheriff liable in situations *only when there was a showing of malice,* on the notion that public officials should be given the benefit of the doubt.

In any event, it is reasonable for any jail administrator to expect that, while standards of medical care are continually rising in the community, the prisoner's right to medical care will expand along with these higher standards of care. Clearly, it is the duty of all officials who are in charge of prisoners to identify their responsibilities in the area of medical care and to see that all jailers are strongly committed to fulfillment of these responsibilities.

Consider the following two cases and then respond to the questions which are asked:

A. In one county jail, an administrator was informed by the jail physician that two dangerous prisoners were suffering from tuberculosis. The local hospital and the county TB hospital then refused to accept the two prisoners as patients because the hospital did not have any security facilities for dangerous persons and did not wish to endanger the other hospital patients. The administrator was forced to place these two prisoners in a cell that was as far away from the other prisoners as possible, although still not isolated, for the protection of the other prisoners.

B. In a city jail, it became apparent that a prisoner was suffering from smallpox. The jail contained a hospital room but it was not considered secure enough to hold the prisoner who had been guilty of a violent crime. The jail administrator decided to leave the ailing prisoner in the cell which he shared with two other prisoners and, although he did not inform the hospital or a doctor of the smallpox, continued to watch and care for the ill prisoner himself.

Do you think that either of these jail administrators could be cited by a court for negligence? Indicate below if you believe that a legal suit against either (or both) of these men is likely to be successful. Give your reasons why.

Turn page for answer . . .

Answer:

It is not likely that the administrator in example A could be considered liable in a court of law. Several of his actions suggest that he did, in fact, make sincere attempts to provide proper medical care for the prisoner and also did the best within his power to isolate the prisoner from others in his care. Whereas there seems to have been an actual showing of malice or indifference on the part of the administrator in example B, the unfortunate circumstances of A could not be considered directly attributable to neglect or indifference on the administrator's part.

It is likely that, in many jurisdictions, the jail administrator in example B could have been found liable to his prisoners for his negligence. It is apparent that the man was well aware of the nature of the illness and did nothing to keep the other prisoners from being exposed to it. In fact, it is also apparent that he made no effort to inform a medically qualified person of the prisoner's condition.

In your jail, how would *you* handle a prisoner with an infectious disease?

Suppose the ill prisoner were considered a serious security risk as well; how would you handle him?

In many of the cases which have been mentioned in this chapter, a sheriff or head jailer has been held liable by a court for negligent actions which were committed by his deputies or jailers. Naturally, this brings up the question: Will the superior public officer (police staff officer, sheriff, head jailer, etc.) be held liable for all the wrongful acts of his subordinates?

Courts have generally agreed that the superior officer will be held liable for wrongful acts of his subordinates *only if he directs, cooperates in, or ratifies them.* And further, it is interesting to note that where a sheriff or head jailer allows a kangaroo court to exist among prisoners, he often becomes responsible, in the eyes of the courts, for the acts of the prisoners in charge just as though they were his employees.

It is possible that a court can find a superior officer liable for the acts of his subordinates if they have known the subordinates to be unfit for their duties and have, nevertheless, failed to discharge such employees.

> In one case, a group of police officers beat a prisoner so severely that he eventually died. The court then examined the issue of whether or not the superior officer was liable for the death of the prisoner because he had known these subordinates to be unfit but had not discharged them. The court stated that *the power to discharge employees carries with it a duty to exercise that power vigilantly and that any negligent failure to exercise it will bring on liability.*[15]

It is also reasonable to expect that if a sheriff or other public official has failed to exercise due care in the *selection* of subordinates and if he knows of their incompetence, he will be held liable by the courts for their negligent acts.

Which of the following statements are true and which are false?

TRUE FALSE

The sheriff or superior officer of the jail can be held legally responsible for the acts of his subordinates only if he has actually participated with them in these acts.

The sheriff or superior officer of the jail will be held legally responsible for all the wrongful acts of his subordinates.

The sheriff or superior officer of the jail will generally be held liable for the wrongful acts of his subordinates if the court finds that he has, in some way, cooperated in them, knowingly allowed them to occur, or neglected to discharge subordinates whom he knows are unfit.

Turn page to check your answer . . .

Answers:

TRUE	FALSE	
	X	The sheriff or superior officer of the jail can be held legally responsible for the acts of his subordinates only if he has actually participated with them in these acts.
	X	The sheriff or superior officer of the jail will be held legally responsible for all the wrongful acts of his subordinates.
X		The sheriff or superior officer of the jail will generally be held liable for the wrongful acts of his subordinates if the court finds that he has, in some way, cooperated in them, knowingly allowed them to occur, or neglected to discharge subordinates whom he knows are unfit.

Now see if you can correctly complete the following statement:

According to the courts, the jailer's legal obligation to look after the *general welfare of all prisoners* includes the following important functions:

1. _____

_____

2. _____

_____

3. _____

_____

4. _____

_____

Turn page to check your answers . . .

Answer:

Although your wording will be different, your answer should include the following important points.

According to the courts, the jailer's legal obligation to look after the general welfare of the prisoners includes the following important functions:

1 protection of the prisoner from injury by fellow prisoners
2 protection of prisoners from negligent or intentional harm by sheriffs, jailers, and deputies
3 protection of the prisoner from possible injury to himself
4 provision of adequate treatment, food, clothing and shelter

While the jail administrator is responsible to the community for maintaining the security of his institution, he also bears the responsibility to see that security considerations do not deprive prisoners of their rights. Court decisions have indicated that the concept of prisoners' rights is constantly expanding. In cases where administrators are shown to be inflexible in their approach to security matters, the courts are apt to *force* new rules and behavior on administrators. Naturally, rules laid down by the courts in reaction to a particularly bad situation may be more difficult to live with than reasonable and practical rules which the administrator could or should have developed in the first place.

It is nearly impossible for anyone to predict just what administrative decisions will become the subject of judicial disapproval. However, it is possible to observe legal decisons in which certain areas are generally regarded as within the realm of "administrative discretion". It is in these areas of "administrative discretion" that it becomes increasingly important for jail administrators to develop carefully documented rules and procedures that are based on clearly formulated objectives and are designed to treat the inmate fairly and, at the same time, allow the administrator to do his job without undue hindrance.

Note:

Although many of the court decisions in matters of "administrative discretion" have arisen from cases concerning federal prisoners, they are also relevant to the jail. It is important to note that these decisions involve constitutional questions and are therefore applicable to state jurisdictions.

- Mail to Public Officials

The courts have held that *prisoners may not be denied the right to communicate with outside officials*. In two legal cases, courts have stated:

> Restrictions will not be allowed to operate to deny a prisoner access to the . . . courts for the presentation of alleged legal wrongs.[16]

and,

> The prisoner may write to a court about anything; he may write to executive officers about unlawful treatment, and to his attorney about legal matters and treatment.[17]

Another important decision is that a prisoner cannot be punished for making a complaint against his keeper. Just such a situation arose in a recent case in which a prisoner was punished after he had made a series of complaints to the Commissioner of the District of Columbia. The court held, in this instance, that the prisoner could not be punished by the institution for his complaints to the court.[18]

In order to ensure that a case will not arise in which a jail administrator is held responsible for blocking prisoner complaints to outside officials, the following procedure is suggested:

- Provide prisoners with a special mailbox set aside for sealed letters to various public officials. this enables each prisoner to have access to officials not immediately responsible for his custody and discipline and prevents possibility of interference by jail personnel in mailing of such letters.

- Attorney-Client Relationship

One area which has become increasingly sensitive is that of the *attorney-client relationship*. Implicit in this relationship is the right to *confidential* visits and communication. In determining a particular jail's policy, it might be wise to consider the following:

- In federal institutions, attorney-client visits are *not* subject to auditory supervision.
- In federal institutions, although it is permissible to open correspondence between the attorney and his client, it can be examined only as a means of detecting contraband: inspecting officials are sworn to uphold the strict confidence of any legal advice or written discussions of pending or prospective litigation which they see in this correspondence.

Both the federal government and the state of Kansas have a similar rule which allows for the inspection of attorney-client mail for the purpose of detecting contraband. They have defended this policy with the following reasoning:

- Anyone can get an envelope printed with an attorney's name, and if that envelope cannot be inspected, there is no effective way to prevent contraband or other illegal materials from entering the institution.

• Legal Resource Material

In some jurisdictions, prisoners can be confined in jails and county penitentiaries for sentences up to three years and, in some instances, for even longer periods. Where this practice exists, the problem of providing acceptable avenues to prisoners who wish to appeal convictions and to attack other legal problems becomes a matter of serious consideration; an administrator must consider the question of the need to *provide legal resource materials to the prisoner.*

It is well established that a defendant is entitled to appointed counsel for both his trial and his appeal. However, there are no similar provisions for the prisoner who is attacking his conviction or sentence or who is seeking some relief related to his confinement. Consequently, an administrator should seriously consider the possibility of making legal materials available to prisoners in the jail. In doing so, the administrator might find the following Bureau of Prisons policy useful as a model in establishing his own operating procedure:

- A small amount of resource material is provided at each federal institution as a means of giving the average inmate access to some materials. Volumes include
  - *United States Criminal Code and Criminal Procedure* (annotated)
  - Volumes relating to habeas corpus and motions to vacate sentences
- If an inmate has the financial means to purchase a law book from the publisher, he is allowed to do so unless there are strong reasons not to allow this (ie , indications that books will be used for barter with other inmates). In such cases, the Bureau of Prisons administrators are cautioned that it is inappropriate to determine that specific material sought by an inmate is not relevant to his case. Refusal to allow an inmate to obtain such materials could result in judicial censure or an adverse decision.

While an inmate is to have reasonable access to legal materials and a reasonable opportunity to prepare his documents, his legal activities must not interfere with his program activities except where he is faced with imminent deadlines established by the court. Further, in cases where the prisoner is in segregation, the following policy should be followed:

- Those in *administrative* segregation (prisoner segregated for his own safety or closer supervision) should, as far as possible, be given the opportunity to work on legal matters and have access to legal reference materials; their access should be equal to that available to the general jail population.
- Those in segregation for punishment should not normally be permitted to use legal materials because of the brief time they are in such status; however, if they are faced with an imminent deadline and refusal of material would interfere with their access to courts, the material must be made available.

• Inmate Drafting of Legal Documents

Providing legal reference materials to those who are functional illiterates is, naturally, of no use. However, since correctional systems traditionally oppose any kind of activity which could place one inmate in the debt of another, prisons generally prohibit one prisoner from drafting legal documents for another. A number of suits have attacked this rule, and some have been successful. The controlling case in this issue arose from the following incident in the Tennessee State Penitentiary:

> An inmate was held in segregation for a long period of time because it was discovered that he had been writing legal documents for another inmate. It was quite obvious to the court that the inmate receiving the assistance was in need of it. As a result of this, a District Court held that the rule prohibiting one prisoner from writing legal documents for another must fall because, in effect, it deprived the indigent illiterate from having access to the courts. The court stated that this rule could only be enforced *if some reasonable alternative was provided for the inmate.*[19]

What is a reasonable alternative to allowing inmates to draft legal documents for other inmates? Three alternatives are:

- a staff member who has become skilled in aiding uneducated prisoners with writs
- a lawyer who is available to give advice to such inmates
- a program whereby law students assist inmates in preparing writs

• Law School Programs

It has been found, through long experience, that a confined person who is troubled with legal problems and cannot receive knowledgeable advice from someone outside of the jail or institution is likely to become frustrated and bitter; often he becomes a disciplinary problem. To avoid just such a condition among prisoners at Leavenworth Penitentiary, the Bureau of Prisons instituted a legal assistance program in cooperation with the University of Kansas Law School. This program not only involves preparation of writs of habeas corpus but extends to the whole range of needed legal services. Where the law schools believed that prisoners had good cause of action, relief has been granted in a great precentage of cases. Much of the activity of the program has been devoted to disposing of long outstanding detainers lodged against the inmates and, in addition, many civil matters such as compensation claims and domestic relations problems have been handled.

Such a program is also relevant to jails *and short-term institutions*, especially in the areas of compensation claims and domestic relations problems. In fact, some jails which are located near law schools are already involved in such programs and are experiencing success. In many cases, even where there has been no tangible success, the fact that the inmate had someone on the outside listening to him and analyzing his problems has been an important success factor. A first step in establishing such a program in a jail or misdemeanant institution is discussing the plan with the local bar association. Subsequent arrangements and plans can then be made with the law school and the students involved. Efficient use of such a program will undoubtedly prove beneficial to the inmates, to the students who will develop greater insights into the problems of the jail, to the staff of the jail, and to the courts.

• Disciplinary Matters

Another area in which administrative discretion becomes an important factor is the administration of discipline. There has been much litigation in this area probably because administrators have often failed to carefully consider the reasons for using disciplinary measures and have not developed systematic disciplinary procedures. In any case, the courts have not hesitated to intervene in disciplinary matters on the grounds that punishment was cruel and unusual, or that punishment was imposed arbitrarily or capriciously.

> In one case, an inmate was punished because, when he asked to have the opportunity to worship according to the Black Muslim faith and was, in turn, asked to reveal the names of those who would also be participating, he refused to do so. Upon his refusal he was placed in segregation and remained there for a long period of time. He was given no hearing before confinement was ordered, although it was customary to do so. There was no indication that this prisoner created any disorder or difficulty before the request and, in justification, the Superintendent indicated that he segregated the prisoner to prevent any trouble in the form of a riot or escape.[20]

In this case, the court held that this was an arbitrary imposition of serious disciplinary action and could not stand. In considering this case, what do you think the actions were that the court considered arbitrary?

Turn page to check your answer . . .

Answer:
The arbitrary nature of this decision to discipline the prisoner is shown in several ways

- the prisoner had shown no signs of misbehavior or intent to create disorder before making his request, yet on his refusal to answer the question, was summarily placed in segregation—a serious disciplinary measure usually reserved for misconduct and intent to create a disturbance
- the prisoner was given no hearing before confinement in a segregation cell was ordered; this was done in spite of the fact that the standard operating procedure of the prison always before had included a disciplinary hearing to decide whether segregation was called for in the particular case

Intervention by the court is justified through the Eighth Amendment which prohibits cruel and unusual punishment and is applicable to the states through the Fourteenth Amendment. What constitutes cruel and unusual punishment? The following case is instructive as a means of defining cruel and unusual punishment:

> Robert Jordan, a prisoner at the California Correctional Training Facility at Soledad, brought an action against the prison authorities for the following: he was forced to remain in a solitary "strip" cell for 12 days without any means of cleaning his hands, body, or teeth. He had to sleep on a stiff mat which was placed on a cold concrete floor. There was little if any illumination in this cell and medical attention was inadequate. Further, it was shown that prisoners could be placed in such a cell by lower rank personnel without the authorization of the superintendent.[21]

In deciding this case, the court sought to define the meaning of cruel and unusual punishment. It pointed out that punishment might be considered cruel and unusual if it "is of such character . . . as to shock general conscience or to be intolerable to fundamental fairness." In the court's opinion, ". . . a judgment must be made in the light of developing concepts of elemental decency . . ." Further, the court stated that a punishment may be cruel and unusual if it is ". . . greatly disproportionate to the offense for which it is imposed . . ." And finally, the court stated "a punishment may be cruel and unusual when, although applied in pursuit of a legitimate penal aim, it goes beyond what is necessary to achieve that aim; that is when a punishment is unnecessarily cruel in view of the purpose for which it is used . . ."[22]

Certainly, segregating prisoners under living conditions that represent a lower standard than those for other prisoners has not been looked upon with approval by the courts. Two purposes of segregation are:

- placement of a prisoner in an environment where his activities can be controlled to a greater degree than if he were in the jail population
- removal of the prisoner from the jail population where he may be a disruptive influence

Nowhere in the objectives of segregation is there a stated or implied need to subject the prisoner to unclean conditions or to physical hardships. In order to avoid litigation, the jail administrator would do well to see that he has clarified the objectives of segregation for his staff and has standards of cleanliness and humane treatment for them to follow.

• Restriction of Religious Practice

An extremely difficult problem facing the correctional administrator today is that of how to deal with the demands of small groups of inmates who seek special treatment. Again, this is an important area in which administrative discretion must be exercised with a view towards the rights of prisoners and the limitations of the institution.

In recent years, the Black Muslims have demanded that they be treated as a religious group in correctional institutions. The Black Muslim situation is an example of the type of problem which administrators face in dealing with requests by special groups. Typical of their requests are:

- the right to hold religious services
- provision of a special diet
- visits by religious leaders
- receipt of Black Muslim newspapers and other religious publications

Since it is extremely difficult to determine whether what a man professes to believe in is or is not a religion, it must be anticipated that a court must accept at face value the assertion that an organization is a religion if it has the trappings of a religion. Consequently, the most practical approach for the correctional administrator is to treat any such group the same as any other religious group *to the extent that this is possible*. Although the right to religious belief is an absolute freedom, the right of religious practice is not. The right to practice of religion may be restricted whenever its expression is contrary to the public good or whenever it presents a clear and present danger to the safety, morals, or general welfare of the community.

A group of Muslims sued for the right to listen to a radio broadcast of Elijah Muhammad, their leader, and to receive his newspaper, *Muhammed Speaks*. The administrator took the position that this broadcast and this newspaper posed a threat to the safety of the prison because of their inflammatory nature. A hearing was held in which copies of the newspaper were introduced into evidence to demonstrate its nature. Reliance was placed in a Fourth Circuit court opinion which upheld the restriction on subscriptions to this newspaper. The administration showed that putting the radio broadcasts on the limited number of radio channels would interfere with other inmates' radio program listening. The Muslims had also requested special meals during their month of fasting, Ramadan. The administration pointed out that provision of a special diet for one month would be extremely burdensome upon the institution, because it would require obtaining special foods and, more important, would require a division of staff for food preparation and special custodial supervision. The administration's testimony was that, in view of the strict budgetary planning required of the institution, this activity would be burdensome in the extreme.

The court upheld the restrictions on special diet and feeding and it also upheld the restrictions on the radio broadcasts, but the court found that the newspaper was not inflammatory and should be allowed into the prison.

It might be said that the court upheld restrictions on the practice of the Muslim religion because preparation of a special diet and broadcasting the radio program would: (check the correct answer)

___ 1) present a clear and present danger to the prison community
___ 2) present a danger to the morals of the prison community
___ 3) be contrary to the public good

Turn page to check your answer . . .

Answer:

The preparation of a special diet and broadcasting the radio programs would 3) be contrary to the public good. There are two reasons why this was believed to be true:

- The number of radio channels was limited and broadcast of the program would interfere with other inmates' radio listening.
- Preparation of special food would place a burden on the staff and would place a financial burden on the prison whose budget was already stretched tight.

• Rights of Prisoners Suspected of Crime in Jail

When a crime is committed in a prison or in a jail the prisoner suddenly may assume a dual status, that of prisoner and suspect in a new crime. Therefore, the prisoner becomes *entitled to the rights of any suspect who is walking the streets.* In other words, the suspect is allowed the privilege against self-incrimination and right to counsel. The Supreme Court has held that any statement made by a suspect is not admissible in a prosecution unless he is given the "Miranda" warning which states:

- he has a right to remain silent
- anything that he says after the warning has been given will be held against him
- he has a right to counsel before he makes a statement
- if he cannot afford counsel, he has a right to have counsel provided for him

When investigating a crime that was committed in a prison or jail setting, there are two major steps:

- The offender must be identified and isolated as a matter of internal security, discipline and morale.
- The prosecution of the offender must be carried on with careful compliance with the protections outlined above.

Therefore, the following is suggested:

- As soon as investigation narrows to several suspects, there should be no further questioning of the suspects by the jail staff.
- The suspects should be isolated until the arrival of the investigative agency that takes over the responsibility of the investigation for prosecution purposes.

Sometimes there are considerations which override the prospect of a successful prosecution. For instance, in some instances, the administrator must break up plans for mass disturbances or revengeful actions by friends of assault victims. He can isolate suspects on the basis of hearsay evidence and he can promptly interrogate them for purposes of preventing violence or possible injury to prisoners or personnel. Naturally, the results of this type of interrogation cannot be used against the suspect in a court of law, other evidence for a legal trial, if necessary, will have to be obtained by the investigative agency.

Below you will find a number of statements which are *incorrect*. Read each one carefully, and then, using the space provided, give reasons why the statements are incorrect:

1. A jail administrator would be justified in ruling that all attorney-client mail must be opened by the staff for the purpose of ascertaining the progress of the prisoner's legal case.	
2. A jail administrator would be justified in placing a prisoner in solitary as a result of a mail campaign which the prisoner waged in which he contacted a number of important elected officials and made untrue statements about the "inhumane" treatment he was getting at the jail.	
3. Although federal prisons must supply certain legal resource material for its prisoners, there is no reason why jail administrators should have to do so too.	
4. When a prisoner is placed in segregation—either administrative or punitive—he should not be granted access to legal materials under any circumstances.	
5. It is never acceptable for a prisoner to prepare legal documents for another prisoner who is virtually illiterate and in need of legal aid.	
6. The jail administrator is given full discretion in imposing discipline. The courts have never been able to find grounds upon which they can uphold prisoner charges which arise from disciplinary actions brought against them.	
7. An administrator must comply with all special requests by those prisoners who wish to practice their religion while incarcerated. The right to practice a religion is an absolute right.	
8. When a crime is committed in a prison or in a jail, the prisoner who becomes a suspect loses all of his rights.	

Answers:

1 The only acceptable purpose for which attorney-client mail may be opened and inspected is for the *detection of contraband*. If a jail administrator deems this process necessary to the security of his jail, he must make sure that the confidential nature of the correspondence is respected by himself and his staff.
2 The courts have held that prisoners may not be denied the right to communicate with outside officials under any circumstances. They have clearly stated that disciplinary action cannot be taken against a prisoner who is making a complaint against his keeper
3 In jails where prisoners can be confined for exceptionally long periods of time (two or more years), the jail administrator must seriously consider instituting a policy whereby he provides certain legal resource materials for the use of prisoners
4 Prisoners in administrative segregation should be given opportunities to work on legal matters and have access to legal reference materials; in fact, their access should be equal to that available to the general jail population. Prisoners in punitive segregation should not normally be permitted to use legal materials because they will be there only briefly. However, if they are faced with an imminent deadline and refusal of material would interfere with their access to the courts, the material must be made available to them.
5 When there are no *reasonable alternatives* provided to inmates for the drafting of legal documents, the rule stating that prisoners cannot draft such documents for other prisoners *cannot* be enforced.
6 The courts have not hesitated to intervene in disciplinary matters on the grounds that punishment was cruel and unusual, or that discipline was imposed arbitrarily or capriciously
7 The right to practice religion is not an absolute right. An administrator can turn down certain requests for special treatment if he can show that the practices would be contrary to the public good or would present a clear and present danger to the safety or general welfare of the community.
8 The prisoner who becomes a suspect for a crime that was committed in the jail, is entitled to all the rights a free citizen is entitled to. These rights protect him against self incrimination and provide him with counsel.

The way in which "administrative discretion" is used by an administrator may cause the courts to shed their reluctance to interfere in administrative matters and intervene in order to protect prisoners from unfair, arbitrary or unduly harsh decisions. Throughout this section, it has been apparent that whenever a jail administrator is unwilling or unable to establish a standard of reasonableness in the exercise of administrative discretion, he will increase the extent of court participation in the administration of his jail. Although most of the cases used in this section have been those in which courts have consistently held the administrator liable, or, in some degree, to blame, not all courts have been consistent in holding administrators liable. It is interesting to note, however, that there are a growing number of states that have discarded the doctrine of sovereign immunity (immunity from civil suits). And in some jurisdictions, the courts have simply ignored this doctrine and have thus removed the jail administrator's traditional protection. It is therefore reasonable to state that even if a jurisdiction is now protected from suit because of sovereign immunity, there is no reason to assume that a court will not discard the doctrine and permit a suit to be filed.

IT MAKES GOOD SENSE FOR THE JAIL ADMINISTRATOR TO ESTABLISH JAIL STANDARDS THAT WILL PROVIDE MAXIMUM SAFETY AND PROTECTION OF INDIVIDUAL RIGHTS OF ALL PRISONERS.

FOOTNOTES

[1]Kusah v. McCorkle, 170 p. 1023, 1024, 100 Wash. 318 (1918).
[2]Kusah, *supra* 170 p. 1023, 1025.
[3]Dunn v. Swanson 7 S. E. 2nd, 217 N.C. 279 (1940).
[4]Browning v. Graves, 152 S. W. 2d 515, 519.
[5]Hixon v. Cupp., 49 p. 927, 5 Okla. 545 (1897).
[6]Ratliff v. Stanley, 7 S. W. 2nd 230, 232, 224 Ky. 819 (1928).
[7]Smith v. Miller 40 N.W. 2d 597, 241 Ia. 625 (1950).
[8]Kendrick v. Adamson, 51 Ga. App. 402, 180 S.E. 647.
[9]Thomas v. Williams, 124 S.E. 2d 409, 412, 413, 105 Ga. App. 321 (1962).
[10]Clark v. Kelly, 133 S.E. 365, 368, 101 W. Va. 650 (1926).
[11]*Ex Parte* Jenkins, 58 N.E. 560, 561 25 Ind. App. 532 (1906).
[12]State ex. rel Morris v. National Surety Company, 39 S.W. 2d 581, 162 Tenn 547 (1931).
[13]Farmer v. State, 79 So. 2d 528, 531, 244 Miss. 96 (1955).
[14]Seidman, Barney, "Prisoners & Medical Treatment: Their Rights & Remedies", *Criminal Law Bulletin*, Vol. 4, No. 8 (1968), pp. 450-455.
[15]Fernilius v. Pierce 138 P 2d 12, 22, Cal. 2d 266 (1943).
[16]Lee v. Tahash 352 F. 2d 970 (8th Cir. 1965).
[17]Brabson v. Wilkins, 19 N.Y. 2d 533 (1967).
[18]Fulword v. Clemmer, 206 F. Supp. 310 (D.C. 1962).
[19]Johnson v. Avery, 393 U.S. 483 (1969).
[20]Howard v. Smythe, 365 F. 2d, 428 (4th Cir. 1966).
[21]Jordan v. FitzHarris, 257 Fed. Supp. 674 (1966).
[22]Jordan v. FitzHarris, 257 Fed. Supp. 674 (1966).

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