LEGAL UPDATE

2021 Jail Administrators Conference

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OBJECTIVES

- Review new case law related to the constitutional provisions applicable to jail administration.
- Review foundational cases outlining constitutional provisions applicable to jail administration.
- Analyze fact patterns of cases to identify potential constitutional issues.
- Discuss recommended practices for jail administrators based on current law regarding jail administration.

ROADMAP

- Due to the COVID-19 Pandemic courts were partially shut down or in a non-traditional operational status for much of 2020.
- This resulted in a limited number of decisions being issued.
- Likely to start seeing an increase in the opinions in the coming months now that courts are starting to return to traditional operations.
- This presentation will discuss some new case opinions and issues that have occurred recently. Additionally, it will discuss some trends that have been observed in recent litigation and review some foundational cases related to jail administration.

SMITH V. MCKINNEY (8TH CIRCUIT)

- Prefatory Note: This case has a lot of moving parts and covers a few different areas. Think of this primarily as a due process case.
- Smith was an inmate in the Iowa Department of Correction who was serving a life sentence for first-degree murder.
- From 1995 until December of 2012, Smith had been incarcerated at a maximum-security facility and was then transferred to a medium security facility.
- In May of 2014, a confidential source filed a complaint against Smith under the Prison Rape Elimination Act (PREA).

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- Smith was placed on administrative segregation while an investigation into his alleged inappropriate sexual contact with other inmates was conducted.
- The investigation occurred between May 28, 2014, and June 4, 2014. On June 4th a disciplinary notice for the alleged conduct was written and notice was provided to Smith on June 12th.
- Smith requested to speak with a Correctional Counselor and on June 13th he met with the Counselor and denied the allegations. Smith also told the Counselor that he, "would be willing to hurt an innocent person."

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- On June 18th DOC conducted a hearing on the disciplinary notice. During the hearing Smith denied the allegations and wanted to see the confidential information against him.
- The hearing officer denied his request and found him guilty of several rule violations. Smith lost 365 days of earned time, a year of disciplinary detention with credit for 27 days served and there was a recommendation to transfer Smith back to a maximum-security facility.
- Smith was transferred to a maximum-security prison less than a month later and placed in segregation to serve the remainder of his disciplinary detention. The notes on the transfer paperwork said that the transfer was "based on the nature of the recent violations and Offender Smith's concerning threats of harming others."

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- When Smith was transferred, he lost his job, wages, security classification, security points and his inmate tier status.
- Smith appealed the decision, and the appeal was denied on July 30, 2014. The appeal officer stated that he reviewed the confidential information and visited with the informants and found them to be credible.
- Smith then filed a supplemental appeal which was denied by a different appeal officer.

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- In October of 2014, Smith filed for post-conviction relief (PCR) in state court challenging the PREA adjudication.
- The state trial court granted Smith's request for relief stating that when evidence is based on confidential information, the hearing officer must prepare a contemporaneous summary of the information for the inmate.
  - The only summary the state court reviewed from the hearing officer was dated two years after the disciplinary hearing was conducted.
  - The court found that the summary was prepared due to the PCR challenge.

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- The state court struck the confidential information from the record and found that without that information there was no grounds to support the allegations against Smith.
- The state court ordered that Smith's records "reflect that he was not found to have violated the rules as identified in the disciplinary notice." The court also assessed costs against the State of Iowa and ordered the 365 days of earned time reinstated.
- Smith's record was expunged, and he was given his earned time, but he was not transferred back to a medium security prison and his classification, tier status and security points remained unchanged.

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- Smith brought a civil rights claim under 42 USC § 1983 alleging that the prison officials violated his due process rights under the Fourteenth Amendment by moving him indefinitely from a medium security facility to a maximum-security facility based on the expunged disciplinary report.
- The District Court granted the defendant's motion for summary judgment and found that "no reasonable juror could conclude that Smith suffered an atypical and significant deprivation in relation to the ordinary incidents of prison life" and that Smith could not show that he had a liberty interest at stake that required due process protection.

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- Smith appealed to the 8th Circuit Court of Appeals.
- The 8th Circuit noted:
  - "The 14th Amendment's Due Process Clause protects persons against deprivations of life, liberty, or property; and those who seek to invoke its procedural protection must establish that one of these interests is at stake. A liberty interest may arise from the Constitution itself, by reason of guarantees implicit in the word liberty, or it may arise from an expectation or interest created by state laws or policies."
- The Court also noted that when dealing with liberty interest created by state law or policy the Court's focus is on the nature of the deprivation resulting from the law or policy instead of the language of the particular law or policy.

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- The 8th Circuit pointed out that the United States Supreme Court has "held that the Constitution itself does not give rise to a liberty interest in avoiding transfer to more adverse conditions of confinement."
- The 8th Circuit also noted that its has previously held that "an inmate has no constitutional right to remain in a particular institution" and that this is "even true if the inmate was transferred to a higher-security institution that presented a more restrictive environment than the prior institution."
  - "In fact, prison administrators may ordinarily transfer a prisoner for whatever reason or for no reason at all."

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- The 8th Circuit did note however, that "the Supreme Court has also held … that a liberty interest in avoiding particular conditions of confinement may arise from state policies or regulations, subject to the important limitations set forth in *Sandin v. Conner*.
- The *Sandin* standard requires a court to determine if the confinement imposes atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life.
  - "The duration and degree of restrictions bear on whether a change in conditions imposes such a hardship."

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- The Supreme Court has acknowledged the difficulty of locating the appropriate baseline to determine what constitutes an atypical and significant hardship. (and still hasn't resolved that issue).
- The Supreme Court has noted however, that an inmates' assignment to a state supermax prison imposed an atypical and significant hardship "under any plausible baseline."
  - The conditions of the supermax prison factored heavily in the Supreme Court's decision.
- The 8th Circuit noted that while they have not established a baseline for what constitutes an atypical and significant hardship, they have said what does not count as atypical and significant.

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- "We have consistently held that a demotion to segregation, even without cause, is not itself an atypical and significant hardship."
- "Indeed, Sandin teaches that an inmate has no due process claim based on a somewhat more restrictive confinement because he has no protected liberty interest in remaining in the general population; his only liberty interest is in not being subjected to atypical conditions of confinement."
- To assert a liberty interest, an inmate must show some difference between their new conditions in segregation and the conditions in general population which amount to an atypical a significant hardship.

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- The 8th Circuit notes that determining if conditions are atypical and a significant hardship is a fact question.
  - This will be determined on a case-by-case basis.
- The 8th Circuit reviewed prior cases where it found conditions did not constitute atypical conditions or significant hardships
  - loss of work privileges, loss of good time, mail restrictions, visitation restrictions, telephone privileges, commissary privileges and personal possessions (the only thing the inmate was allowed to have was legal materials, a religious text, soap, toothbrush, toothpaste, a washcloth and toilet paper).

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- The 8th Circuit held that Smith's being held at a maximum-security facility did not constitute an atypical condition of confinement and a significant hardship based on the facts of the case.
  - The Court did state in a footnote that "these precepts are limited by the prohibition against transferring a prisoner in retaliation for the inmate's exercise of a constitutional right."
- SIDENOTE: These type of cases actually have two steps in the analysis: 1) does the inmate have a liberty interest in avoiding [insert the condition of confinement]; and 2) If so, what process is due.
- Since the Court found no liberty interest, they don't discuss what process is due.

REVIEW OF THE FOUNDATION

THE BEDROCK

- Whitley v. Albers, 475 US 312 (1986)
- Estelle v. Gamble, 429 US 97 (1976)
- Turner v. Safley, 482 US 78 (1987)
- Hudson v. McMillian, 503 US 1 (1992) [cites Whitley and Estelle]
- Bell v. Wolfish, 441 US 520 (1979)
- Sandin v. Conner, 515 US 472 (1995)
- Wolff v. McDonnell, 418 US 539 (1974)
- Graham v. Connor, 490 US 395 (1989)

GUIDING PRINCIPLES

- Courts look at whether a jail policy/regulation that impinges on inmates' constitutional rights is "reasonably related" to legitimate penological interests
  - Four Part Test
    - (a) whether there is a "valid, rational connection" between the regulation and a legitimate and neutral governmental interest used to justify it,
      - connection cannot be so remote as to render the regulation arbitrary or irrational;
    - (b) whether there are alternative means of exercising the asserted constitutional right that remain open to inmates,
      - Alternatives, if they exist, will require some judicial deference to the corrections officials' expertise;
    - (c) the extent an accommodation of the asserted right will have an impact on staff, on inmates' liberty, and on the allocation of limited resources,
      - if impact is substantial, requires particular deference to corrections officials; and
    - (d) whether the regulation represents an "exaggerated response" to jail/prison concerns, the existence of a ready alternative that fully accommodates the prisoner's rights at *de minimis* costs to valid penological interests being evidence of unreasonableness.

DISCIPLINE

- There is a big distinction between a pretrial detainee and a convicted prisoner. This distinction is the hinge point of what rights they have, including in disciplinary situations.
- Thing to remember is that a pretrial detainee has a due process right prior to "punishment" being imposed
  - You can still take action to ensure the security and safety of the facility based on what's going on
    - Example: A pretrial detainee assaults another inmate. This detainee could be "locked down" at that time since his actions present a safety and security concern for the facility.

DISCIPLINE

- While the case was not specific to discipline, Bell v. Wolfish lays the ground work for subsequent cases involving pretrial detainees and the due process clause.
  - Remember punishment and discipline are not synonymous terms. Due Process Clause also protects pretrial detainees from actions that amount to punishment
    - i.e. excessive force (*Graham v. Connor*, 490 US 395 (1989)).
- 8th Circuit has recognized the due process required for convicted inmates outlined in *Wolff* (1974) in a pretrial detainee case. *Whitfield v. Dicker* (2002)
  - *Inmate was given notice, findings and ability to call witnesses*

WOLFF

- Wolff v. McDonnell, 418 US 539, is a case dealing with the revocation of good time credits
- Wolff relies on *Morrissey v. Brewer* (1972) to identify a list of due process rights that need to be afforded during a disciplinary hearing
  - Wolff limits Morrissey which is a case dealing with parole revocation
- Don't confuse what the Court is saying between Wolff and Sandin
  - Sandin limits Wolff but only as it applies to convicted inmates
  - 8th Circuit has held Sandin as inapplicable to pretrial detainees
    - The lines between pretrial and post conviction can become blurry
      - If post conviction are treated like pretrial detainees as far as due process in discipline then distinction becomes less of a problem

WOLFF ELEMENTS

- Notice
- Written statement of evidence relied upon by fact finders and reason for discipline
- Ability to be heard
- Ability to present evidence
- Impartial hearing board

NOTICE

- Notice must provide inmate with certain information
- The aim is "to prevent arbitrary deprivations without threatening institutional interests or imposing undue administrative burdens"
- Must contain enough information to enable the accused to "marshal the facts and prepare a defense"
- If known, officials should provide the date, place and nature of the alleged misconduct
  - May withhold certain facts, if necessary, to protect informants
- Must be provided in a reasonable amount of time prior to hearing
- Whenever possible, do this in writing

WRITTEN STATEMENT OF EVIDENCE RELIED ON

- One of the interests here is to protect the inmate against collateral consequences based on a misunderstanding of the nature of the original hearing
- Courts also believe it will help ensure that officials will act fairly.
  - Remember courts are looking at a potential for the abridgment of fundamental constitutional rights
- SCOTUS has stated that without the written record an inmate will be at a severe disadvantage in propounding his own cause to or defending himself.
- If certain items are excluded the fact that they are excluded should be noted
  - Court was primarily concerned with situations implicating personal or institutional safety

ABILITY TO PRESENT EVIDENCE

- Due Process requires that the inmate facing discipline be allowed to call witnesses and present documentary evidence in his defense
- Court recognizes potential for disruption and interference with the correctional environment and grants deference to jail officials to limit the extent of the inmate's ability to call witnesses
  - Examples of reasonable justifications for limitations outlined in Wolff
    - Risk of reprisal or undermining of authority
    - Limiting access to other inmates to collect statements or compile documents
    - Relevance of testimony to be provided
    - Lack of necessity
- Court makes note that it would be "useful" for disciplinary board to state the reasons for refusing to call a witness
  - Same is likely true for a decision to limit evidence allowed to be presented

IMPARTIAL HEARING BOARD

- One of the chief concerns is guarding against the hazard of arbitrary decision making
- No requirement that the Hearing Board be made up of people from outside of the organization or the jail
- Court will be looking to ensure that the decision "was not so lacking in evidentiary support as to violate due process or otherwise constitute an arbitrary decision."
- 8th Circuit has held that the report of a correctional officer, even if disputed by the inmate and supported by no other evidence, legally suffices as "some evidence" upon which to base discipline as long as the violation is found by an impartial decision maker.

USE OF FORCE

- Does the 4th Amend. standard for excessive force apply in the jail environment? (Objective reasonableness)
  - Sometimes
  - 4th Amend. standard generally applies to free citizens under *Graham v. Connor*
  - SCOTUS has left open the question if the analysis goes beyond the point at which arrest ends and pretrial detention begins.
  - Split in Circuits on this point…8th Cir. says it still applies at booking
- What are the other excessive force standards in jails
  - 14th Amend. Substantive Due Process?
  - 8th Amend. Cruel and Unusual Punishment?
  - Both?
- Whether it's a 14th or an 8th Amend. analysis depends on the inmate's status
  - Pretrial detainee – 14th Amendment analysis
  - Incarcerated convict – 8th Amendment analysis

14TH AMENDMENT

- Under the Due Process Clause, a detainee may not be punished prior to an adjudication of guilt in accordance with due process of law. *Bell v Wolfish*, 441 US 520 (1979).
- Pretrial detainees are entitled to at least as great of protection under the 14th Amend. as that afforded convicted prisoners under the 8th Amend. *Owens v. Scott County Jail*, 328 F.3d 1026 (8th Cir. 2003)
- Punishment that deprives inmates of minimal civilized measures of life's necessities is unconstitutional. (*Owens)*
- Standard will be similar to 8th Amend.
- Not uncommon for this to be looked at as a conditions of confinement issue
- Where's the break point between 4th and 14th
  - Not very clear…8th Cir. authority suggests arraignment

8TH AMEND. CRUEL AND UNUSUAL PUNISHMENT

- Unnecessary and wanton infliction of pain
  - Extent of injury is informative to court but is not dispositive
- Key inquiry is whether force was applied
  - In a good faith effort to maintain or restore order or
  - Maliciously and sadistically to cause harm
- Objective component to the analysis
  - Is alleged wrongdoing objectively "harmful enough" to establish a constitutional violation
  - This component is contextual and corresponds to "contemporary standards of decency"
    - If actions were malicious and sadistic courts will find that the contemporary standards of decency have been violated

SANTIAGO V. BLAIR, 707 F.3D 984 (8TH CIR. 2013)

- Facts were heavily disputed but because stance of case was a review of summary judgment denial court used facts **most favorable to Plaintiff**
- Santiago was a Missouri DOC inmate who did not report to work in the kitchen as scheduled.
- Santiago was found and taken to administrative segregation for not reporting to work as scheduled
- While "stripping out" begins to argue with Lt.
- Lt. approaches with handcuffs and stated he was going to "kick his ass"
- Santiago takes on a defensive position and says he will "drop" the Lt.

SANTIAGO

- Others respond and Santiago submits to being cuffed.
- Lt. tells Santiago, "Let me lock the safety, we wouldn't want them to accidently tighten on you."
- Lt. then tightens the handcuffs to the "crushing point".
- CO escorts Santiago to medical (protocol for someone going into segregation).
- CO digs his nails into Santiago and Santiago yells "stop manhandling me."
- CO asks, "What are you going to do about it tough guy" Santiago responds, "I'm not going to let you blow me anymore."

SANTIAGO

- Santiago is slammed against the wall, pepper sprayed, thrown to the floor, his legs are restrained (sounds similar to hog tie) and as he's being lifted up a CO turned his left wrist upward in a sharp motion dislocating his wrist.
- During medical evaluation nurse asked if handcuffs could be removed and Capt. says, "No, he's fine."
- Santiago complains about dislocated wrist to nurse and nurse treats for a laceration on wrist but does not address possible dislocation
- Nurse advises that Santiago needs to shower to decontaminate from pepper spray and Capt. says "Leave him, maybe he'll think twice before threatening one of us."

SANTIAGO

- Santiago is then placed in administrative segregation where he requests the nurse to examine his wrist and states he thinks it's broken. Same nurse as before looks at his wrist and says, "It don't look broke to me," and leaves. Santiago resets his wrist himself using a sock and the handicap bar in the cell.
- A grievance was filed alleging C.O.s had used excessive force. Grievance is denied. Follow up appeal is also denied.
- Santiago tells another C.O. about the excessive force grievance and C.O. says, "you would be smart to just drop it" "if you know what's good for you, you will leave Lt. out of it," "maybe a couple more years in the hole will knock that tough ass attitude out of you, I can make that happen or maybe we'll find you hanging in one of these cells"
- Kept in segregation from July 26, 2008 until late February 2009 when he gets a conduct violation for damaging a chuck hole on the door to his cell

SANTIAGO

- Moved to a new cell and another C.O. asked Santiago why he was moved
- Santiago tells his story, C.O. then steps aside so Santiago could see Lt. who says "you just ain't going to learn," "things are going to get worse."
- Next day Santiago is moved back into isolation. Appears before disciplinary board for hearing on the conduct violation and receives additional time in segregation.
- § 1983 action filed alleging excessive force, deliberate indifference to medical needs in violation of the 8th Amend. and retaliation in violation of the 1st Amend.

SANTIAGO

- District court grants summary judgment to C.O.s on official capacity claims but denies summary judgment on individual capacity claims
  - District court uses 4th Amend standard on excessive force claim
- Interlocutory appeal to 8th Circuit who reviews de novo.
  - Court reverses District court for using the wrong standard on excessive force
  - Remands for determination of "whether the inmate's testimony, viewed in light of other relevant facts such as the extent of his injury and the security threat reasonably perceived by defendants, would support a reliable inference of an unnecessary and wanton infliction of pain

HEALTH CARE

- What's the standard medical claims will be evaluated under?
  - Deliberate indifference (8th Amend. and 14th Amend)
    - Like before distinction is convicted prisoner vs. pretrial detainee
    - Same standard is applied to both
- Plaintiff must show
  - Suffered from an objectively serious medical need
  - That staff new about the need but deliberately disregarded it
    - A serious medical need is one that has been diagnosed by a physician as requiring treatment or one that is so obvious that even a layperson would easily recognize the necessity for a doctor's/medical attention.
- Sidenote: Just because they were previously cleared doesn't mean you're off the hook. If your staff observes conduct that would lead a reasonable person to believe the inmate is having a serious medical need, get them to a hospital, doctor, etc.

BACK TO SANTIAGO

- Santiago's deliberate indifference claim failed.
- Court found that failure to loosen the handcuffs did not prevent the nurse from evaluating whether or not the inmate's wrist was dislocated/broken.
- Santiago didn't sue the nurse.

FOURTE V. FAULKNER COUNTY, ARK.(2014)

- Fourte suffered from high blood pressure and becomes partially blind after his treatment was delayed while at the Faulkner County Jail.
- Fourte sued the attending physician, jail nurse, and the County for violation of his constitutional rights.
- Admitted as a pretrial detainee in Sept. of 2009.
- Jail did not use a medical screening questionnaire.
- On October 3rd he submits a medical form complaining of high blood pressure and asking jail staff to call two family members who could get him his medicine.
- Family never contacted. Jail begins logging his blood pressure on October 5th.

FOURTE

- On October 24th and 30th Fourte submits forms complaining of vision loss and requests blood-pressure medicine.
- On October 30th the nurse gives him a pill. Fourte submits another form saying he needs medication daily, that he is losing his eye and asks for help.
- On November 2nd the nurse schedules a visit with the doctor on November 5th. The doctor ordered medication to start on November 7th, but it doesn't arrive until November 18, 2009, after doctor had written a second prescription.
- Fourte was diagnosed as legally blind on September 23, 2010.
  - Presents evidence linking his blindness to lack of blood-pressure medicine while he was incarcerated.

FOURTE

- 8th Circuit states that deliberate indifference is "more than negligence, more even than gross negligence, and mere disagreement with treatment decisions does not rise to the level of a constitutional violation."
  - "Deliberate indifference may be found where medical care is so inappropriate as to evidence intentional maltreatment."
- Plaintiff tries to hook liability to jail's failure to conduct a medical screening.
  - Note: Ark. Jail standards require that "claims of illness or injury should be…checked by professional medical personnel."
- Court finds that symptoms of "lazy eye," "sweating," and "difficulty getting around" are less obvious signs of a serious medical condition than those in other cases.
- Court does not agree with Plaintiff that medical screening was required and finds that most of the claims against County are intertwined with the actions of the medical professionals who received qualified immunity.
- "Medical malpractice is not deliberate indifference"
  - Medical malpractice does not become a constitutional violation merely because the victim is a prisoner.
  - Fact that a different doctor would have handled treatment differently does not show deliberate indifference.

FIRST AMENDMENT STUFF

- Communications
  - Holloway v. Magness, 666 F.3d 1076 (8th Cir. 2012)
    - No First Amendment obligation to provide telephone calls at a certain cost
    - Exclusive contract with provider was not an infringement
  - Note watch out for calls to lawyers. That's not the First Amendment, that's an access to courts issue
- Retaliation
  - Inmate must show that they engaged in a protected activity
  - That the government official took adverse action against them AND that the action would chill a person of ordinary firmness from continuing the activity AND
  - That the adverse action was motivated at least in part by the exercise of the protected activity
    - Threat of retaliation is sufficient injury if made in retaliation of inmate's use of protected activity like the grievance procedures
    - Ordinary firmness is an objective test not a subjective one
  - These claims survive in *Santiago*

FIRST AMENDMENT STUFF

- Religion
  - Coercing someone to participate in religious programs or programs with religious overtones may violate Establishment Clause of 1st Amend. *Jackson v. Nixon*, 2014 WL 1258016 (8th Cir. 2014)
    - *Kerr* test: 1) has the government acted 2) does the action amount to coercion and 3) is the object of the coercion religious or secular
  - Religious Land Use and Institutionalized Persons Act (RLUIPA)
    - To succeed inmate must show that their ability to practice religion was substantially burdened or that another alternative means of accommodation needs has been exhausted

FIRST AMENDMENT STUFF

- Mail and other Regulations
  - Imprisonment does not automatically deprive a prisoner of certain important constitutional protections *Turner v. Safley*
  - The Constitution sometimes permits greater restriction of such rights in a prison (jail) than it would elsewhere. *Turner*
  - Restrictive prison (jail) regulations are permissible if they are reasonably related to legitimate penological interests and are not an exaggerated response to such objectives. *Turner*
  - *TURNER* FOUR FACTOR TEST
    - 1) Is there a valid, rational connection between the prison regulation and the legitimate governmental interest put forward to justify it
    - 2) Are there alternative means of exercising the right that remain open to the inmates
    - 3) What impact will accommodation of the asserted constitutional right have on the guards, the other inmates and on the allocation of prison resources in general
    - 4) Are ready alternatives for furthering the governmental interest available
  - Courts show a lot of deference to corrections authority in this area
    - Officials get "wide-ranging deference in the adoption and execution of policies and practices that in their judgment are needed to preserve internal order and discipline and to maintain institutional security. *Bell v. Wolfish*, 441 US 520 (1979)
    - *Turner* requires that authorities show more than a formalistic logical connection between a regulation and a penological objective

CONDITIONS OF CONFINEMENT

- Sandin v. Conner, 515 US 472 (1995)
  - States (and local govt.) may in certain circumstances create liberty interests that are protected by the Due Process Clause
    - These interests will generally be limited to freedom from restraint which, while not exceeding the sentence in such an unexpected manner as to give rise to protection by DPC, nonetheless imposes atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life.
  - Prisoner has no liberty interest in having prison officials follow prison regulations

MEDICAL MARIJUANA IN THE JAIL

- I've had this question come up a few times. "What do we do if they have a medical marijuana card and are prescribed marijuana or edibles?"
- 1) Don't play doctor. You can, however, speak with your medical provider about their formulary.
- 2) Article 14, Section 1, Subsection 7, paragraph 1(a) of the Missouri Constitution
  - "(1) Nothing in this section permits a person to:
    - (a) consume marijuana for medical use in a jail or a correctional facility."

TIME FOR A CANDID CONVERSATION

- Bad facts make bad case law and ugly statutes.
- There are four cornerstones:
  - Policy
  - Hiring/Retention (selecting the right people and removing those who aren't the right people)
  - Training
  - Supervision

FAILURE TO TRAIN

- In limited circumstances, a local government's decision not to train certain employees about their legal duty to avoid violating an individual's rights may rise to the level of an official government policy and subject the entity to liability.
- The government's failure to train its employees in a relevant respect must amount to deliberate indifference to the rights of persons with whom the untrained employees come into contact.
- Deliberate indifference requires proof that a government actor disregarded a known or obvious consequence of his actions.
  - A pattern of similar constitutional violations by untrained employees is ordinarily necessary to demonstrate deliberate indifference for purposes of failure to train.

FAILURE TO SUPERVISE

- There are two types of failure to supervise claims recognized under the law
  - Negligent Failure to Supervise
  - Intentional Failure to Supervise
    - Intentional failure to supervise has the same elements as negligent failure to supervise, plus a few more requirements.

NEGLIGENT FAILURE TO SUPERVISE

- An employer has the duty to exercise reasonable care to control their employees as to prevent them from intentionally harming others or from conducting themselves in a manner that creates an unreasonable risk of bodily harm.
- The doctrine applies if the employee
  - Is on the premises of the employer or is using a chattel (property) of the employer AND
  - The employer knows or has reason to know that it has the ability to control the employee and knows or should know of the necessity and opportunity for exercising such control

INTENTIONAL FAILURE TO SUPERVISE

- In addition to the showings required for Negligent Failure to Supervise it must also be shown that:
  - A supervisor exists
  - The supervisor(s) knew that harm was certain or substantially certain to result
  - The supervisor(s) disregarded this known risk
  - The supervisor(s) inaction caused damage

QUESTIONS?