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UNITED STATES GOVERNMENT DEPARTMENT OF JUSTICE

Memorandum

TO : The File DATE: February 26, 1971

RWB:rb

FROM : Richard W. Bourne, Attorney
Voting & Public Accommodations

D.J. 168-29-2

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R.A.J.

SUBJECT: United States v. Wyandotte County, Kansas Jail

On February 24, 1971, I received a phone call from Frank Menghini and J. W. Mahoney, co-counsel in the Wyandotte County Jail case, regarding our proposed consent decree.

Menghini and Mahoney have objections to almost every provision of the consent judgment. They deny that the county jail is a "public facility" within the meaning of Title III, object to the words "affirmatively tried to" in the middle of p. 3, and have objections to every provision of the requested relief. These last objections, by paragraph, are as follows:

Paragraphs 1 & 2 - They dislike the words "discriminate . . . on the basis of race" because they say this implies they have discriminated, and they claim only that they have racially segregated prisoners only to promote prisoner safety.

Paragraph 3 - They say they use age, sex, and mental insanity as bases for segregating prisoners and beyond this cannot use nonracial standards because they only have two tanks in the prison to which they can assign prisoners.

Paragraph 4 - They say the Bureau of Prison's man Mr. Turner took with him says they lack facilities to do any of the specific things asked in this and the succeeding paragraphs, that they lack money, and that Mr. Turner has failed in his commitment to them to come up with suggested sources of federal fudning to assist them.

Paragraph (a) - See paragraph 3, supra.

Paragraph (b) - This is impossible without redesign of the jail, they say, which requires money they do not have.

Paragraph (c) - Work projects are impossible without new facilities and funding; work release would not get the approval of local judges or probation officers, they say, although they admit not having sought to get approval for these.

Paragraph (d) - This is impossible without new facilities; they said they would consider use of the roof or parking lot after these were suggested, but that they had no confidence these were realistic alternatives.

Paragraph (e) - Impossible.

In addition to the above comments, defense counsel said that most of the relief requested would require funds from the county commissioners, who they do not represent; that Mr. Turner had promised full disclosure of our case in return for the voluntary discovery allowed him, which they said had not been forthcoming; and that they would consent to almost any specific relief if we would send a representative out and show them precisely how it could be implemented.

Remarks:

The selection of the cases in this packet is based on the line of thinking that (1) there is an obligation on the part of prison officials to provide for the health and safety of the prisoners in their (officials') custody and (2) prisoners retain certain constitutional rights even though they are convicted of crimes.

The cases which lend legal support to the first statement are under the heading "Obligations of Prison Authorities." Under this heading are two cases. One is a state supreme court case and the other is a U. S. Supreme Court case. Even though both cases are old, both are still good law. Also under this heading are statutes from the state of Kansas related to the obligations of prison officials. They are not very detailed, but they may be used as statutory support for the obligations of those responsible for the Kansas prisons.

The second statement is divided into several sub-headings. These sub-headings are "Freedom of Religion," "Writ of Habeas Corpus," "Cruel and Unusual Punishment," and "18 U.S.C. 242." The purpose of the cases listed under statement 2 is two fold: first, to point out some of the Constitutional rights which prisoners retain; second, to point out the legal sources of these rights.

Freedom of Religion

This is one of the First Amendment rights which is guaranteed to all prisoners. Freedom of religion was chosen because it is such a rapidly expanding right and also because it is a right which has many difficult implications for prison regulations. The cases under this title establish the fact that prisoners do have Constitutional rights.

Writ of Habeas Corpus

There is only one case briefed under this subtitle but it is important because the writ may be used as a possible remedy to correcting certain prison conditions.

Cruel and Unusual Punishment

The cases under this sub-heading illustrate the advantages and difficulties in using this theory and amendment as a legal basis in correcting the conditions of a prison. Certain general criteria are set out in a few of the cases.

18 U.S.C. 242

The cases under this sub-heading illustrate the use and requirements for such use of this criminal statute. There is a good possibility that this statute was violated in the Wyandotte County Jail.

OUTLINE OF CASES

I. Obligations of Prison Authorities

1. Kusah v. McCorkle
2. Logan v. United States
3. Kansas Statutory Law

II. Constitutional Rights of Prisoners

1. Freedom of Religion

    a. Howard v. Smyth
    b. Sewell v. Pegelow
    c. Sostre v. McGinnes

2. Writ of Habeas Corpus

    a. Coffin v. Reichard

3. Cruel and Unusual Punishment

    a. Jordan v. Fitzharris
    b. Talley v. Stephens

4. 18 U.S.C. 242

    a. Lynch v. United States
    b. Screws v. United States
    c. United States v. Jones
    d. Section 242 of Title 18

CRUEL AND UNUSUAL PUNISHMENT

Talley v. Stephens, 247 F. Supp. 683 (E.D. Ark. 1965)

Facts:

This case a suit in equity brought by three inmates of the Arkansas State Peniteniary for the purpose of restraining the superintendent of the peniteniary from continuing certain practices which the plaintiffs claim violated their 14th Amendment civil rights.

Plaintiffs contend that they were unconstitutionally subjected to cruel and unusual punishment, and that they were denied access to the courts. They did not question the legality of their confinements.

Issue:

Is the imposition of corporal punishment on convicts by prison authorities unconstitutional?

Holding:

The corporal punishment in this fact situation included assaults by prisoner guards (trustees) and a whipping by the warden of the prison.

The Court restated the established principles that prisoners do not lose all their civil rights, and that the Due Process and Equal Protection Clauses of the 14th Amendment follow them into prison and protect them from unconstitutional administrative action on the part of prison authorities carried out under color of state law, custom, or usage.

As to the constitutionality of any and all corporal punishment, the Court did not declare all such punishment unconstitutional. However, the Court did mention several safeguards for corporal punishment:

1. it must not be excessive;

2. it must be inflicted as dispassionately as possible and by responsible people; and

3. it must be applied in reference to recognizable standards whereby a convict may know what conduct on his part will cause him to be punished or whipped and how much punishment will be given for specific offenses or violations of regulations.

The Court did not find the above safeguards in existence at the Arkansas prison and enjoined further corporal judgment of petitioners until the safeguards were established.

Finally, the Court stated that:

> However, it must not be overlooked that respondent is in charge of the Peniteniary and is responsible for the acts of his subordinates, including trusty guards. He is not relieved of that responsibility by personal ignorance of abuses practiced in fields and barracks.

<u>See</u>:

<u>Robinson v. Calif</u>., 370 U. S. 660 (1962) applied the 8th amendment to the states through use of the 14th.

<u>Washington v. Lee</u>, 263 F. Supp 327 (1966)

<u>Black v. U. S.</u>, 269 F. 2d 38 (9th Cir. 1959) held that the 8th amendment was adopted to prevent inhuman, barbarous, or torturous punishment.

Section 242 of Title 18 of the United States Code:

> Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects any inhabitant of any State, Territory, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States . . . shall be (guilty of a crime against the United States).

There are four essential elements in the violation of the above statute:

1. the defendant must deprive the victim of a right, privilege or immunity secured or protected by the Constitution of the United States;

2. the accused must have been acting under color of law;

3. the person upon whom the alleged act was committed must have been an inhabitant of a state of the United States;

4. there must have been an intent on the part of the accused, to have willfully subjected the victim to a deprivation of a right, privilege or immunity secured or protected by the Constitution of the United States.

18 U.S.C. 242

Lynch v. United States, 189 F.2d 785 (5th Cir. 1965)

Facts:

This case involves an appeal from a conviction of a sheriff and one of his deputies for violating 18 U.S.C. 242. The sheriff had arrested, detained, and held under his control several Negroes. These black prisoners were then turned over to a group of Ku Klux Klaners. The K.K.K. carried away the Negroes and beat them without trial or due process of law.

Issue:

Was there a willful intent on part of the officers to deprive their prisoners any or all of their civil rights of equal protection and due process?

Holding:

The officers' defense to the charge that they surrendered the prisoners to the mob because of threats made to them (the officers) and in the belief that any other course of action would result in even more violence.

Basing its decision on the facts and circumstances, the Court ruled that the police voluntarily and completely cooperated with the K.K.K. and in so doing consciously and willfully intended to deprive the prisoners of their Fourteenth Amendment right of Due Process and Equal Protection.

The Court stated that:

> "Equal Protection of the law" relates, not only to the right of protection from the officer himself, but also relates to the right of protection due the prisoner by the arresting officers against injury by third persons.
>
> . . . It may be that failure by inaction to discharge official duty may constitute a denial of equal protection of the laws.

The Court concluded that it appeared beyond a reasonable doubt that the officers' dereliction of their duties, "whether by omission or commission," sprang from a willful intent to deprive the prisoners of equal protection of the law.

18 U.S.C. 242

Screws v. United States, 325 U.S. 91 (1945)

Facts:

This case involves a violation of Section 20 of the Criminal Code, 18 U.S.C. 52. This section required a specific or willfull intent to deprive a citizen of some constitutional right.

A young black man was arrested by the sheriff in Baker County, Georgia. The prisoner was handcuffed and taken to jail where he was continuously beaten for thirty minutes. Later the prisoner was removed to a hospital where he died.

Issue:

One of the issues involves the meaning of the word "willfully" in relation to depriving a citizen of his constitutional rights.

(The interpretation given by the Court may be helpful in applying 18 U.S.C. 242, which also requires a willful deprival of rights.)

Holding:

The Court reversed a lower court decision which had found that the sheriff did not "willfully" deprive the prisoner of his rights.

The following is helpful in applying 18 U.S.C. 242:

> The fact that defendants may not have been thinking in constitutional terms is not material where there

aim was not to enforce local law but to deprive a citizen of a right and a right that was protected by the Constitution. When they so act they at least act in reckless disregard of constitutional prohibitions or guarantees. Likewise, it is plain that basic to the concept of due process of law in a criminal case is a trial -- a trial in court of law, not a "trial by ordeal."

18 U.S.C. 242

United States v. Jones, 207 F.2d 785 (5th Cir. 1965)

Facts:

A state officer, under color of state law, beat, bruised, battered, and injured a prisoner under his custody with a rubber hose for an infraction of prison rules and attempted to coerce information from the prisoner with reference to alleged offenses.

Issue:

Was there a violation of Section 242 of Title 18 of the Civil Rights Act?

Holding:

The Court held that the facts of the case as admitted by the defendant violated 18 U.S.C. 242 of the Civil Rights Act.

OBLIGATIONS OF PRISON AUTHORITIES

Logan v. *United States*, 144 U.S. 263 (1892)

Facts:

Five men were arrested and charged with larceny in the Indian Territory. While chained and in the custody of U.S. marshals, the prisoners were attacked by a group of men who were armed with weapons. Two of the five prisoners were killed, the others seriously wounded.

The marshal and several of the guards (deputies) were in league with the attackers.

In deciding the case the Court said:

> When a citizen of the United States is committed to the custody of a U.S. marshall, or to a state jail, . . . such a citizen has a right under the Constitution and laws of the United States . . . to be treated with humanity, and to be protected against all unlawful violence, while he is deprived of the ordinary means of protecting himself.