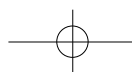
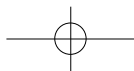


CIVIL LIABILITY ISSUES IN CORRECTIONS





CIVIL LIABILITY ISSUES IN CORRECTIONS

Darrell L. Ross

CAROLINA ACADEMIC PRESS
Durham, North Carolina

Copyright © 2005
Darrell L. Ross
All Rights Reserved

Library of Congress Cataloging-in-Publication Data

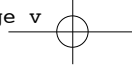
Ross, Darrell L. (Darrell Lee), 1951–
Civil liability issues in corrections / By Darrell L. Ross.
p. cm.
Includes index.
ISBN 1-59460-083-X
1. Correctional personnel--Malpractice--United States. 2. Prisoners--Legal status, laws, etc.--United States. 3. Torts--United States. I. Title.

KF9730.R67 2005
344.7303'56--dc22

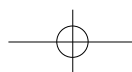
2005002079

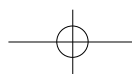
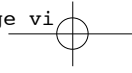
Carolina Academic Press
700 Kent Street
Durham, NC 27701
Telephone (919) 489-7486
Fax (919) 493-5668
www.cap-press.com

Printed in the United States of America



Prison and jail personnel around the country who daily pound the rock, maintaining the security of correctional institutions and thus providing for our community protection. I thank them for their tireless efforts. I dedicate this book to them.





CONTENTS

Preface	xiii
Acknowledgments	xv
Chapter 1 Overview of the Trends and Impact of Prisoner Litigation	3
Trends in Correctional Litigation	4
Case Examples	11
Impact of Court Intervention	14
Summary	15
References	16
Cases Cited	18
Chapter 2 American Law and the Court System	19
Criminal Law Versus Civil Law	20
Criminal Law	20
Civil Law	22
Rule of Law	23
Sources of American Law	24
Common Law	24
Case Law	25
Constitutions	26
Statutes	28
Administrative Rules	28
The United States Court System	29
State Courts	29

viii CONTENTS

Federal Courts	30
United States Supreme Court	32
Guide to Case and Statutory Citations/Legal Research	33
Briefing a Court Case	34
Case Citation	35
Case Facts	35
Issue/Issues	36
Court Decision	36
Dissenting or Concurring Opinions	36
Comments/Case Significance (Analysis)	37
Standard/Principle of Law	37
Summary	37
References	38
Cases Cited	39
Chapter 3 The Evolution and Restriction of Prisoner Rights	41
The Hands-Off Doctrine (1789–1964)	42
Punishment and Discipline in the Penitentiary	42
Legal Status of Prisoners	43
Gradual Erosion of “Hands-Off”	45
Prisoner Rights Era (1962–1979)	46
Rationale for Granting Rights to Prisoners	46
Prisoners Possess Constitutional Rights	47
Restrained Approach/Deference Era (1979 to present)	51
Essential Developments Impacting Correctional Law	54
The Prison Litigation Reform Act, and the Antiterrorism and Effective Death Penalty Act	56
Summary	63
References	63
Cases Cited	65
Chapter 4 Civil Liability and the Mechanics of Section 1983 Actions	69
History of Section 1983	69

CONTENTS ix

Essential Components of Section 1983	71
Acting Under Color of Law	74
The Thrust of Section 1983 Actions	75
Using Section 1983	75
Bivens Actions	76
Remedies under Section 1983	78
Attorney's Fees	81
Payment for Damages	82
Official Immunity	83
Absolute Immunity	83
Qualified Immunity and Good Faith	84
Mechanics of a Section 1983 Lawsuit	85
Habeas Corpus Petitions	89
Summary	92
References	92
Cases Cited	93
Chapter 5 Deliberate Indifference and Medical Care	97
Application of the Deliberate Indifference Standard	99
Deliberate Indifference to Adequate Medical Care	101
Claims for Delaying Medical Care	104
Deliberate Indifference and Psychological Care	106
Booking and Intake in Detention Facilities	110
Deliberate Indifference and Environmental Hazards	112
The Americans With Disabilities Act and Prisoners	115
Deliberate Indifference and AIDS	116
Summary	118
References	120
Cases Cited	121
Chapter 6 Civil Liability and the Use of Force	125
Research on Use of Force in Corrections	126
Standards of Review Concerning the Use of Force in Corrections	128

x CONTENTS

Pre-Trial Detainees and Shocks the Conscience Test	130
Correctional Use-of-Force Standards Established by the Supreme Court	133
Whitley v. Albers (1986)	134
Hudson v. McMillian (1992)	135
Application of the Court Standards	138
Lethal Force	139
Use of Physical Tactics	141
Use of Restraints	143
Use of the Restraint Chair	146
Forced Cell Extractions	147
The Use of Pepper Spray and Other Less-Than-Lethal Equipment	148
Summary	150
References	152
Cases Cited	155
Chapter 7 Civil Liability for Claims of Failure to Protect and for Prison/Jail Conditions	157
Claims Alleging Failure to Protect	158
Protective Custody	158
Standard of Review	159
Prisoner-on-Prisoner Physical Assaults	162
Enemies Within the System	163
Prisoner-on-Prisoner Sexual Assaults	166
Officer-on-Prisoner Assaults	167
Failure to Protect and Sexual Misconduct of Correction Officers	169
Sexual Assaults of Officers on Prisoners	171
Cross-Gender Supervision	174
Deliberate Indifference and Prison and Jail Conditions	178
Summary	182
References	184
Cases Cited	185

Chapter 8 Liability and Wrongful Custodial Deaths	187
Plaintiff Assertions of Wrongful Custodial Deaths	188
Negligence Components	189
Special Duty of Care	190
Wrongful Custodial Death Claims under Section 1983	192
Excessive Force and Restraint Claims	193
Deliberate Indifference to Obvious Medical/Psychological Needs	197
Failure to Train Officers	199
Prisoner Suicides	201
Suicide and Deliberate Indifference	202
Suicidal Risk Factors	204
Allegations of Failure to Train	207
Summary	209
References	211
Cases Cited	212
Chapter 9 Liability Issues Surrounding Searches and Segregation	215
Searches	217
Cell Searches	219
Strip Searches	221
Body Cavity Searches	223
Segregation	224
Lower Courts Application	230
Transfers of Prisoners	233
Summary	236
References	237
Cases Cited	238
Chapter 10 Correctional Supervisor Liability	241
Managerial Duties and Potential for Liability	242
Liability Under Section 1983	244
Foundation for Liability	244
Who is the Policy Maker?	244

xii CONTENTS

Theories of Supervisory Liability	247
Standard of Review	247
Hiring Practices	248
Negligent Entrustment	251
Negligent Assignment	252
Failure to Train	252
Failure to Direct	257
Failure to Supervise	259
Failure to Discipline and Negligent Retention	260
Sexual Harassment	263
Administrative Defense	266
Liability Reduction	266
Summary	267
References	268
Cases Cited	269
Chapter 11 Civil Liability and the Impact on Corrections	273
Legal Standards	274
Correction Administration	275
Prison Litigation Reform Act	278
First Line of Defense	279
Cases Cited	280
About the Author	281
Table of Cases	283
Index	295

PREFACE

Having worked in a close-custody prison with over 5,000 prisoners, I have an appreciation and understanding of what correctional officials and officers face on a regular basis. Daily, correctional staff must make decisions which affect the lives of prisoners. Frequently such decisions can have consequences that disturb the equilibrium of the facility, resulting in riots, disturbances, escapes, hostage taking, and/or violence directed at staff. The recent spotlight on the abuse of some detainees at a military prison in Iraq as a result of improper decision making by a few soldiers should remind the astute correctional practitioner that the proper use of authority and decision making are instrumental in operating the correctional facility.

Working in the contemporary correctional facility requires that officers and administrators possess a fundamental knowledge of the constitutional rights of prisoners and how the courts apply the Constitution to the confined. This book has been written with this primary objective in mind. Since the emergence of prisoner litigation, numerous United States Supreme Court decisions have been issued. Frequently the Court establishes for the first time, or refines a standard of review, regarding a constitutional issue. Such legal standards are then applied by a lower court to a myriad of correctional topics. The resulting case decisions frequently create policy implications for the correctional agency which require a change in correctional procedures and practices. A lower court's decisions force correctional practitioners to change how they make decisions which involve prisoner rights. Failing to follow these court-mandated standards of review heightens the risk of their liability.

Correctional liability is a dynamic area of constitutional law, and although the number of prisoner lawsuits have significantly decreased with the passage of the Prison Litigation Reform Act (1996) by Congress, prisoners still file about 25,000 Section 1983 lawsuits annually and file over 25,000 habeas corpus petitions. Keeping abreast of these standards of review and how lower courts apply them, can be a full-time endeavor for the correctional practitioner.

This book addresses the predominant liability issues which correctional officials routinely encounter. While the book focuses on Section 1983 liability decisions, cases reflecting state tort standards of review are also presented. A unique aspect of the text is that combines a multifaceted approach to the subject. The book not only presents an analysis of case law, but it combines current scholarly legal research specific to corrections with research on current trends in correctional liability. It also presents recommendations for reducing liability by examining components of risk management and by building defenses to counter prisoner litigation. Further, the book uses examples of cases in which I have participated as an expert witness, underscoring how lower courts apply Supreme Court standards to varying correctional issues.

Liability issues stemming from jail and prison circumstances comprise the bulk of the text. First, it presents an overview of the trends in correctional litigation. The next chapter addresses the court system, law making, and how to brief a case. Then a chapter outlines the evolution of prisoner litigation, followed by a chapter on the mechanics of Section 1983 prisoner litigation. Subsequent chapters follow, which apply specific constitutional amendments to specific correctional liability issues.

The book has been particularly structured to identify United States Supreme Court decisions on the more prominent issues in corrections, the appropriate constitutional amendment which addresses the issue, the applicable standard of review, and a review of how lower courts apply the standard. Reviewing cases in this manner allows students to study the laws regarding prisoner litigation more effectively and can assist the correctional official and line officer in applying the courts' decisions to the various facets of operating the jail or prison. One chapter addresses specific administrative liability concerns and provides proactive recommendations for reducing the number of lawsuits as well as suggestions for preparing to defend a prisoner or employee lawsuit.

It is hoped that the text will not only be useful in the college or university classroom but will also benefit detention and prison personnel and jail and prison administrators. It applies to correctional academies for new recruits or to in-service training for veteran correctional personnel. The main goals of the book are for the student to comprehend more fully how the courts apply constitutional amendments to the incarcerated in order that he or she can be better prepared to enter the field of corrections, and for veteran correctional employees to enhance their performance regarding these issues.

Darrell L. Ross, Ph.D.

ACKNOWLEDGMENTS

This book could not have been written without the assistance of others, and to the following individuals I would like to express my sincere appreciation for their suggestions:

Marvin Zalman, Wayne State University. I first was exposed to the study of correctional litigation in graduate school at Michigan State University. I am grateful to Professor Zalman and his teaching strategies, which influenced my interest in the field, including researching and teaching correctional law, and writing this book.

Jack Leonard, Carl Brannan, Melissa Webster, and Louis Titus Elliot. I appreciate their cooperation and long hours of review of the text and the many suggestions they gave which enhanced its readability.

