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Rights of State Prisoners - Federal Court Intervention in State Prison Administration; Jones v. Wittenberg

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RECENT CASE

CONSTITUTIONAL LAW—RIGHTS OF STATE PRISONERS—FEDERAL COURT INTERVENTION IN STATE PRISON ADMINISTRATION

Jones v. Wittenberg, 330 F. Supp. 707 (N.D. Ohio 1971).

IN *Jones v. Wittenberg*,[1] District Court Judge Don J. Young found that the constitutional rights of the prisoners of Lucas County Jail in Toledo, Ohio, were being infringed; that the conditions existing there constituted cruel and unusual punishment, prohibited by the eighth amendment to the United States Constitution. Also, detention, as a matter of routine for those awaiting trial, under the same conditions, was held to be violative of due process. Later, in *Jones v. Wittenberg*,[2] problems of implementation were solved by a sweeping grant of specific forms of relief.

On appeal, the Sixth Circuit is confronted with the question of how far the trend of federal court intervention into state prison administration is to extend.

The plaintiff prisoners brought a class action for themselves and those who are presently or may be confined in the Lucas County Jail. They sought injunctive and declaratory relief under section 1983 of the Civil Rights Act.[3]

Experts testified for plaintiffs that this jail was uncommonly bad in every aspect. With the exception of murderers and women, there was no attempt to separate the young from the old nor those convicted from those held in pretrial detention (the latter comprising about three-quarters of the total number of inmates). At times only one or two guards were available for the entire three floors of cells. Overcrowding caused many prisoners to sleep on the floor. Leaking and ill-functioning plumbing contributed to deplorable sanitary conditions. There was no infirmary and health care was difficult to obtain. Food was served in an unsanitary manner and was inadequate in quality and quantity. Discipline was enforced by confinement in strip cells which were unheated and located below ground level. Imposition of discipline occurred without notice, hearing, or right to counsel. There were no social services, exercise, recreation, reading, or rehabilitation programs. The opinion noted that grand juries had often condemned these conditions.

The court held that (1) it had jurisdiction, (2) this was an

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1 323 F. Supp. 93 (N.D. Ohio 1971).
2 330 F. Supp. 707 (N.D. Ohio 1971).
3 42 U.S.C. § 1983 (1970).

inappropriate case for application of the abstention doctrine because of chilling effects on vital issues of civil rights, (3) the class action was proper since the claim of any one particular individual could become moot at any time, and (4) the conditions violated plaintiffs' constitutional rights and they were entitled to relief.

After hearings confined to remedies, the court issued an extraordinary order in which it granted plaintiffs' specific relief. The defendants were first given ninety days to bring the jail population down to no more than two inmates per cell. A plan to provide every habitable room in the jail with one ceiling light fixture was to be submitted within thirty days and implemented within ninety days. Within thirty days, at least two guards were to be on duty on each floor at all times and one of them was to patrol the cell blocks. As a condition of employment or continued employment, every guard was to be required to pass the course provided by the United States Bureau of Prisons. The defendants had ninety days to present a comprehensive plan for upgrading jail personnel. Food services were to be brought within nutritional and public health guidelines given by the court. Within thirty days defendants were to submit a plan which would include classification and diagnosis of prisoners at intake, a work or study release program, group and individual counselling, education, religious programs, recreation, constructive occupation during confinement, and improved visitation privileges. Every prisoner was to be furnished material for personal hygiene and was to be required to clean his own area. A full-time physician was to be present in the jail and part-time help for him was to be obtained. Within thirty days a plan to provide space for medical examination, treatment, and convalescence was to be submitted and implemented within one hundred twenty days. Proposals for communication privileges for those awaiting trial were to be offered within thirty days and no unreasonable censorship of the other prisoners' mail was to occur. Non-censored reading material was to be freely furnished. The only exceptions were to be those publications clearly within the Supreme Court's definition of obscenity. No solitary confinement was to be permitted, although isolation within proper limits could be used. Discipline was to be enforced solely by loss of privileges. Defendants were required to submit a plan for certain basic repairs and alterations including interior paint, provision of drinking fountains, and repair of toilets and of the cell-locking system. The court retained jurisdiction until such time it was satisfied that the reforms had become permanent. Since there was no showing of actual malice, Judge Young refused to grant damages against the defendants.[4]

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[4] The order has been summarized in considerable detail to illustrate its sweeping and specific nature.

Thus, the decision went beyond *Holt v. Sarver*,[5] hitherto the pioneering decision in the area of federal court intervention into state prison administration. In *Holt*, after laying down broad guidelines for the correction of a few abuses and requiring a "prompt and reasonable start," to be prosecuted "with all reasonable diligence to completion as soon as possible,"[6] the court said, "subsidiary problems will take care of themselves. It would be a mistake to order too much at this time. . . . The Court will not be dogmatic about time just now."[7]

The path to federal court intervention into state prison administration has been a tortuous and rocky one.

The first obstacle has been the status of the prisoner himself. If he is to be considered similar to a slave, having forfeited his privileges by his offense against society, he has no rights. There are thus no problems of enforcement of his rights. This view, not altogether an unpopular one, long prevailed at law, but its moral posture has gradually lost favor. After all, since about ninety-five per cent of the prisoners return to society at one time or another, practice of rights and obligations during confinement should make for more continuity and less alienation.[8] Today it is generally accepted that the prisoner retains all rights except those necessarily removed by reason of his confinement.[9]

After this hurdle was passed, the courts raised others. Among them were the lack of jurisdiction,[10] the inapplicability to the states of the particular constitutional right asserted through the fourteenth amendment,[11] and the necessity of exhausting state remedies before applying for federal relief.[12] These reasons, showing an understandable

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5 309 F. Supp. 362 (E.D. Ark. 1970).

6 *Id.* at 383.

7 *Id.* at 385.

8 Singer, *Censorship of Prisoner's Mail and the Constitution*, 56 A.B.A.J. 1051 (1970).

9 *Compare* Ruffin v. Commonwealth, 62 Va. (21 Gratt.) 790 (1871) ("He is for the time being the slave of the State. . . . [H]is estate is administered like that of a dead man"), *with* Coffin v. Reichard, 143 F.2d 443 (6th Cir. 1944), *cert. denied* 325 U.S. 887 (1945), *and* Price v. Johnson, 334 U.S. 266 (1948) (One of the rights which may be properly regulated is that of arguing one's own case in a habeas corpus proceeding).

10 *E.g.*, Siegal v. Ragen, 180 F.2d 785 (7th Cir.) *cert. denied*, 339 U.S. 990 (1950) (activities of a jailhouse lawyer).

11 *E.g.*, in the area of cruel and unusual punishment, *see* Louisiana *ex rel.* Francis v. Resweber, 329 U.S. 459 (1947) (Frankfurter, J., concurring), O'Neil v. Vermont, 144 U.S. 323 (1892), *In re* Kemmler, 136 U.S. 436 (1890), Pervear v. Massachusetts, 72 U.S. (5 Wall) 475 (1866). *Contra*, Robinson v. California, 370 U.S. 660 (1962).

12 For what would seem to be a final rest for this objection, see Wilwording v. Swenson, 92 S. Ct. 407 (1971), *noted in* 10 CRIM. L. REP. 4095 (Dec. 15, 1971).

reluctance to interfere with state administrative policies seemed to harden what has been coined as a "hands-off" approach.[13]

Little by little, these objections were overcome. The wedge was the freedom of religion cases where courts could grasp some precedent.[14] Other constitutional rights soon provided vehicles for intervention. Among these were the right to legal assistance (including jailhouse lawyers),[15] freedom of expression (including freedom from mail censorship),[16] and due process access to the courts.[17]

Several factors facilitated this trend toward intervention. One was the emergence of section 1983 of the Civil Rights Act as a remedy rather than habeas corpus, mandamus, and tort claims.[18] Judicial activism in other battlegrounds such as reapportionment and school desegregation had provided models. Judges were becoming painfully aware of the abuses in the correctional system, many of them having for the first time visited the institutions to which they had been sentencing convicts. The protest movements were arriving in the courts, and institutions like schools defended on much the same basis—the special need to enforce internal discipline and the court's lack of expertise in the area.[19]

But the defeat of the old objections did not herald in an era without restrictions. The modern obstacles seem to be a requirement of showing exceptional circumstances when indeed intolerable conditions are the rule rather than the exception.[20] Also, a remnant of the "hands-off" policy, the "rule of reason" recognizes the prisons' right and duty to enforce reasonable disciplinary regulations.[21] So, balancing necessarily comes into play. Is the regulation reasonable? Does a compelling state interest override the right involved in the least drastic manner? Should balancing be employed at all in the area of constitutional rights? Must there be

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13 Gallington, *Prison Disciplinary Decisions*, 60 J. CRIM. L.C. & P.S. 152 (1969); Note, *Judicial Intervention in Prison Administration*, 9 WM. & MARY L. REV. 178 (1967); Note, *Beyond the Ken of the Courts: A Critique of Judicial Refusal to Review the Complaints of Convicts*, 72 YALE L.J. 506 (1963).

14 Williford v. California, 352 F.2d 474 (9th Cir. 1965); Fulwood v. Clemmer, 206 F. Supp. 370 (D.D.C. 1962).

15 Johnson v. Avery, 393 U.S. 483 (1969).

16 *Compare* Palmiginao v. Travisono, 317 F. Supp. 776 (D.R.I. 1970) *with* Diehl v. Wainwright, 419 F.2d 1309 (5th Cir. 1970) (claim of freedom to take Bible correspondence course held frivolous) *and* Stroud v. Swope, 187 F.2d 850 (9th Cir.), *cert. denied* 342 U.S. 829 (1951) (courts are limited to releasing illegally confined prisoners, not their superintendence).

17 *See* Fallen v. United States, 378 U.S. 139 (1964).

18 Cooper v. Pate, 378 U.S. 546 (1964); Note, *Priesoners' Rights under § 1983*, 57 GEO. L.J. 1270 (1969); *42 U.S.C. § 1983: An Emerging Vehicle of Post-Conviction Relief for State Prisoners*, 22 U. FLA. L. REV. 596 (1970).

19 Singer, *supra* note 8.

20 *E.g.*, Wright v. McCann, 257 F. Supp. 737, 747 N.D.N.Y. (1966).

21 *In re* Ferguson, 55 Cal.2d 663, 361 P.2d 417, 12 Cal. Rptr. 753, *cert. denied*, 368 U.S. 864 (1961); McBride v. McCorkle, 44 N.J. Super. 468, 130 A.2d 881 (1957).

a showing of a clear and present danger to prison discipline in order to justify the restriction?[22] Should the courts take into account whether the prison is performing a valid penal function?[23] What constitutes a rehabilitative program?

> As late as 1971, the Second Circuit said:
> We do not doubt the magnitude of the task ahead before our correctional systems become acceptable and effective from a correctional, social, and humane viewpoint, but the proper tools for the job do not lie with a remote federal court. The sensitivity to local nuance, opportunity for daily perseverance, and the human and monetary resources required lie rather with legislators, executives, and citizens in their communities.[24]

By far the most important constitutional vehicle for intervention is the eighth amendment's prohibition against cruel and unusual punishment. At first the clause was of limited value since it was considered to apply only to those practices common in English in the period prior to the Revolution such as quartering, disfigurement, and disembowelment. In *Weems v. United States*,[25] the court took a more expansive view of the clause since the motive for it was to prevent coercive cruelty of whatever kind imposed by government. The intimation was that punishment disproportionate to the crime it punished would be suspect. That decision gives an indication of how the courts have grappled with the meaning of the vague phrase in attempting to define the extent of its content.[26] Perhaps the most far-reaching decision in broad construction of the phrase was *Trop v. Dulles*[27] where Chief Justice Warren, pointing out that the punishment of denationalization was not disproportionate to the crime of wartime desertion, found that it was nevertheless a punishment within the meaning of the amendment. The Second Circuit has developed a three-pronged test consisting of historical usage, practices in other jurisdictions, and public opinion.[28] The last would seem to be the only standard of much use to prisoners.

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[22] *Compare* Jackson v. Godwin, 400 F.2d 529 (5th Cir. 1968) *with* Abernathy v. Cunningham, 393 F.2d 775 (4th Cir. 1968).

[23] Krist v. Smith, 309 F. Supp. 497 (S.D. Ga. 1970); Glenn v. Wilkinson, 309 F. Supp. 411 (W.D. Mo. 1970) (death row segregation *is* valid); Singer, *Prison Conditions: An Unconstitutional Roadblock to Rehabilitation*, 20 CATH U.L. REV. 365 (1971).

[24] Sostre v. McGinnis, 442 F.2d 178, 205 (2d Cir. 1971).

[25] 217 U.S. 349 (1910).

[26] Certain acts have been held as not constituting cruel and unusual punishment. *See* Powell v. Texas, 392 U.S. 514 (1968) (punishment for drunkenness); Rudolph v. Alabama, 375 U.S. 889 (1963) (capital punishment); Louisiana *ex rel.* Francis v. Resweber, 329 U.S. 459 (1947) (a second attempt after a foiled electrocution). *But see* Robinson v. California, 370 U.S. 660 (1962) (punishment for drug addiction held to be cruel and unusual punishment).

[27] 356 U.S. 86 (1958).

[28] Sostre v. McGinnis, 442 F.2d 178, 191 (2d Cir. 1971).

The Arkansas prison system provided fertile ground for litigation in this area since it was one of the last states to abandon corporal punishment for disciplinary infractions.[29] This series of cases culminated in *Holt v. Sarver*,[30] in which the totality of circumstances existing in Arkansas prisons was found to constitute cruel and unusual punishment. *Holt* produced a flurry of generally favorable comments in the law reviews.[31] The court in *Holt* said, "[i]f Arkansas is going to operate a Penitentiary System, it is going to have to be a system that is countenanced by the Constitution of the United States."[32]

Jones v. Wittenberg uses the same totality of circumstances test to find the existence of cruel and unusual punishment. This raises problems in allowing correctional officials (and indeed plaintiffs) to know which factors are critical and to what extent they are critical. How much needs to be corrected before circumstances no longer constitute cruel and unusual punishment?

Another question the principal case raises is the proper role of the courts. There is nearly universal accord that somebody should do something about our prisons. Should it be the courts? Perhaps there is an analogy here to an activist court moving where dilatory tactics have left it no other recourse as in school desegregation.[33] But will court action inhibit the executive and legislative branches from action in prison reform? Is a court sufficiently expert to solve perplexing problems which require special expertise that the other branches can provide?

> No doubt it will be argued that judges are not penologists and should not meddle in prison administration. However neither are judges economists, transportation experts, or electrical engineers; and yet they regularly review decisions of the Federal Trade Commission, Interstate Commerce Commission, and Federal Power Commission.[34]

In *Morris v. Travisane*[35] the court assumed the rather unique position of mediator between the authorities and the prisoners, at times soliciting prisoner opinion on proposed reforms. This role permits a court to

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29 Courtney v. Bishop, 409 F.2d 1185 (8th Cir. 1969); Jackson v. Bishop, 268 F. Supp. 804 (E.D. Ark. 1967), *aff'd*, 404 F.2d 571 (8th Cir. 1968) (Blackmun, J.); Talley v. Stephens, 247 F. Supp. 683 (E.D. Ark. 1965).

30 309 F. Supp. 362 (E.D. Ark. 1970).

31 23 ALA. L. REV. 143 (1970); 24 ARK. L. REV. 477 (1971); 20 DRAKE L. REV. 188 (1970); 16 N.Y.L.F. 659 (1970); 3 SETON L. REV. 159 (1971); 48 TEX. L. REV. 1198 (1970).

32 309 F. Supp. at 385

33 *See* Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 1 (1971): "[O]nce a right and a violation have been shown, the scope of a district court's equitable powers to remedy past wrongs is broad, for breadth and flexibility are inherent in equitable remedies."

34 Symposium: *Prisoners' Rights and the Correctional Scheme: The Legal Controversy and Problems of Implementation*, 16 VILL. L. REV. 1029, 1042 (1971).

35 310 F. Supp. 857 (D.R.I. 1970).

overcome a lack of knowledge and, at the same time, to oversee the entire judicial process including the time after a man is convicted. In *Inmates of Cook County Jail v. Tierney*,[36] after rulings on some preliminary motions indicated the plaintiffs might succeed, the suit was dismissed when settlement was reached on some reforms. Not only were prison officials prodded to action, but the voters also approved a nine million dollar bond issue for new jail facilities![37]

Still another problem is the conflict such intervention creates in our federalist system. The remedial opinion of the principal case alludes to this when it speaks of the delicacy of coming into conflict with the state court, which is by statute in Ohio the rule-making authority for the prisons. A related issue is the fragmentation of authority which occurs in Ohio, involving the state courts, which make rules; the sheriff, who manages the jail; and the county commissioners, who provide the funds. Upon whom does the responsibility devolve?[38]

As far as funds are involved, the court did what little it could by authorizing the transfer of money among funds and whatever accounting procedures become necessary. But, as was pointed out in *Holt*,[39] one cannot make bricks without straw.

This discussion points out that the real problem is a need for a basic change in attitude on the part of the public itself before any real reforms can be effected.

Finally, it has been suggested that this intervention might encourage prisoner suits, overloading the dockets and harassing innocent penal employees. But the dismissal of frivolous claims would seem to be a better remedy when constitutional rights are involved.[40]

Perhaps the most far-reaching aspect of the principal opinion will prove to be that dealing with prisoners, detained awaiting trial, in conditions which even otherwise constitute cruel and unusual punishment is violative of due process. Since the law as to convicts is more developed at this time, this note does not address itself to that point.[41]

It seems clear that some kind of uniform code of prisoners' rights might go a long way toward solving a great many of these problems.[42]

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36 No. 68C504 (N.D. Ill. 1968) (settled) (J. Hoffman, J.).

37 *An Annotated Bibliography on Prison Reform*, 1 BLACK L.J. 189 (1971).

38 McGee, *Our Sick Jails*, 35 FED. PROB. 3 (1971).

39 309 F. Supp. at 382.

40 Note, *42 U.S.C. § 1983: An Emerging Vehicle of Post-Conviction Relief for State Prisoners*, 22 U. FLA. L. REV. 596 (1970).

41 *See* Foote, *The Coming Constitutional Crisis in Bail*, 113 U. PA. L. REV. 960 (1965).

42 5 SUFFOLK U. L. REV. 259 (1970).

Jones v. Wittenberg carries federal court intervention into state prison administration to new lengths. Until more basic and lasting changes are made on the part of society and the states, such intervention seems to be the best chance for ameliorating conditions in our state penal systems.

Chief Justice Burger has said, "[i]f any phase of the administration of justice is more neglected than the operation of the courts, it is the correctional systems."[43] The courts seem to be abandoning that neglect.

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[43] Burger, *The State of the Federal Judiciary*, 57 A.B.A.J. 855 (1971).