

The Current Trend in Legal Challenges  
Against Jails: 1990

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## INTRODUCTION

In an effort to determine what the nature of jail litigation over the past ten years has been, far more questions have been developed than answers. The average jail practitioner has a perception of a continually increasing wave of jail litigation, building more and more each year. This continual, consistent build up does not appear to be the case.

Many criminal justice and jail personnel have the perception of there being a definitive body of jail law. There is no such definitive body of jail law. In examining corrections and detention litigation the majority of reported caselaw is from prisons, not jails. When discussing detention, corrections and jail law there is no commonly accepted set of definitions as to jail litigation topics. With the status of law on corrections and detention being based in prison law no one really has any idea of the true number of law suits being filed against jails, or if jail law has experienced different trends than "prison" law.

### Purpose

The purpose of this paper is to examine recent cases affecting jails and jail programs in order to determine if there are any identifiable trends in the number of law suits or the types of issues upon which law suits are being filed against jails.

Issues involving habeus corpus, personnel and other issues that challenge things other than jail operations or jail conditions have been purposely excluded from this assessment of litigation.

### Methodology

In order to examine trends in law suits a basic data base was established using a set of cases drawn from the publication Detention and Corrections Caselaw Catalog by Rodney C. Miller and Donald J. Walter of CRS, Inc. This data base includes 1107 legal cases from 1979 through 1989 and includes prison and jail litigation. To this base were added a number of more recent cases. When a particular case involved more than one (1) detention issue, the first three primary issues were recorded for the study. Thus one legal case decision may address three separate detention issues.

The descriptive information available is presented to provide the reader with an idea of the nature of jail litigation based on the number of court decisions handed down affecting jails. An initial effort is presented to focus on qualitative changes that may be taking place. Much of the following is an effort to identify the problems in trying to examine trends in jail litigation.

This paper is not an attempt at defining the specific criteria within the topics of the litigation involved. It is not meant to be a definitive paper on how to avoid being sued. The effort here is to make a statement as to the trends of jail litigation and of the topics upon which law suits are filed in order to look for solutions for the more frequently appearing challenges. It is designed to provide understanding and possible direction for those responsible for and interested in jails of the 1990s.

Using Detention and Corrections Caselaw Catalog produced by CRS, Inc. as a reasonably accurate compilation of prison and jail litigation the cases being decided in the courts demonstrate erratic movement from one year to the next. The following list demonstrates the number of case decisions handed down from year to year from 1979 through 1988. Cases for 1988 were used in the analysis,

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rather than 1989, for comparisons due to the incomplete reporting of 1989 litigation at the beginning of this study.

<u>Year</u>	<u>Case Decisions</u>
1979	59
1980	132
1981	108
1982	66
1983	82
1984	52
1985	120
1986	201
1987	184
1988	95

What factors contribute to a more than doubling of cases from 1984 to 1985? Why are there half the decisions handed down in 1988 as there were in 1987? Examination of the trends involved in the topics and quantity of litigation focused against jails can help develop an understanding as to what may cause an increase or decrease in law suits filed. Before those trends can be clearly examined a method needs to be developed to gather information as to the number and types of law suits filed against jails. Neither the American Civil Liberties Union (ACLU), N.I.C. Jail Center, National Institute of Justice (N.I.J.) nor Bureau of Criminal Justice Statistics can identify how many law suits are filed against jails.

We have various indexes of court decisions but no record of total challenges brought against jails and jail administrators. For jail administrators to be prepared and plan ahead to deal with such action they need to know the full extent of legal challenges brought against other facilities.

GENERAL TRENDS

The trend over the past ten years appears to have moved from challenges based on specific conditions and failure to provide for basic human needs to litigation meant to examine administrative procedures and test for the limits on the quality of services provided. The following is a brief summation of an examination of the number and type of law suits filed in 1979 and 1988.

During the year 1979 the Detention and Corrections Caselaw Catalog identified fifty-nine case decisions affecting detention issues. These fifty-nine cases raised 86 issues. Those issues are listed below in rank order as to the number of times an issue was raised within the fifty-nine decisions handed down during 1979.

Civil Rights	8
Failure to Protect	8
Release	7
Medical Care	7
Access to Court	6
Administrative Segregation	5
Classification and Separation	5
Liability	5
Free Speech, Expression and Association	4
Property, Prisoners Personnel	4
Conditions of Confinement	3
Cruel and Unusual Punishment	3
Habeus Corpus	3
Pretrial Detention	3
Mail	3
Rules & Regulations	3
Attorney Fees	2
Discipline	2
Food	2
Intake and Admissions	2
Personnel	2
Privacy	2
Religion	2
Sentences	2
Use of Force	2
Supervision	2
Juveniles	1
Facilities	1
False Imprisonment	1

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Immunity	1
Programs	1
Training	1
Transfers	1
Services	1
Standards	1

The year 1988 demonstrated legal decisions involving ninety-five (95) cases raising 184 issues relating to detention and jails. Listed below is the distribution of 1988 caselaw by frequency of appearance of the topics within the cases.

Civil Rights	20
Liability	18
Access to Courts	17
Failure to Protect	15
Classification and Separation	11
Personnel	9
Discipline	8
Conditions of Confinement	7
Cruel and Unusual Punishment	7
Immunity	7
Release	7
Prisoner Work	7
Sentence	6
Medical Care	5
Pretrial Detention	5
Religion	5
Rules and Regulations	5
Food	4
Facilities	3
Administrative Segregation	2
Attorney Fees	2
Free Speech and Expression	2
Intake and Admissions	2
Mail	2
Prisoner Personal Property	2
Use of Force	2
Religion	1
Privacy	1
Visiting	2

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The most frequent topics for law suits against jails for the respective years were:

1979		1988	
Civil Rights	8	Civil Rights	20
Failure to Protect	8	Access to Courts	18
Release	7	Liability	17
Medical Care	7	Failure to Protect	15
Access to Court	6	Classification & Separation	11
Administrative Segregation	5	Personnel	9
Classification and Separation	5	Discipline	8
Liability	5	Conditions of Confinement	7
Free Speech-Expression	4	Cruel & Unusual Punishment	7
Prisoner Personal Property	4	Immunity	7
Conditions of Confinement	3	Prisoner Work	7

Civil Rights law suits over nine years increased one hundred and fifty percent.

Challenges relating to access to courts increases from 8 to 18 or 125 percent.

Suits testing liability increased from 5 to 18 or two hundred and sixty percent. "Failure to protect" was addressed in 8 cases in 1979 and 15 cases in 1988 for an increase of eighty-seven percent.

Action questioning classification and separation increased from five (5) to eleven (11), demonstrating a one hundred and twenty percent increase.



CASELAW REVIEW

An initial review of individual legal issues raised during 1979 and 1988 reveal the following.

Access to Courts Issues1979

Within the CRS, Inc. Caselaw Catalogue of cases there are five cases decided in 1979 that address the legal challenges involving "access to courts". Three of these five "access to court" cases involved jails, two involved state prison systems.

The Case of Carwile v. Ray, 481 F. Supp. 33 (E.D. Wash. 1979) challenged jail personnel opening court mail contrary to departmental policy. The visual monitoring of attorney-inmate conferences was identified as unreasonable interference with the attorney-client relationship in

Case v. Andrews, 603 P.2d 623 (Sp. Crt. Kansas 1979). The "totality of conditions" found that regulation and restrictions on mail to the courts was only one of numerous situations found to be violating constitutional rights especially when imposed upon pretrial detainees in Jones v. Diamond, 594 F 2d 997 (5th Cir. 1979).

The remaining "access to courts" cases of Mayberry v. Somner, 480 F. Supp. 833 (E.D. Pa. 1979) and Wojtezak v. Cuyler, 480 F. Supp. 1288 (E.D. Pa. 1979) dealt with a convicted inmate's access to counsel because of the interference caused due to institutional transfer and an inmate being placed in a segregated unit for protective custody. The five cases involving various aspects of an individual's access to counsel and access to courts were situations that involved some specific infringement upon certain rights that ultimately affected that individual's ability to confer with counsel or communicate with the court system.

1988

Of the seventeen cases identified as addressing the issue of "access to courts" in 1988, two of the law suits were against jails. The remaining 15 law suits challenging "access to court" in that year involved state or federal prison systems.

The first of two jail litigation cases in 1988 involved a jail inmate suing the New York City Jail because the seat he was riding upon in the jail bus came off and he was injured. When the district court failed to appoint an attorney to assist him in his suit for negligence, he appealed claiming his access to court was denied. The appeals court upheld the denial due to the plaintiff inmate's failure to provide a substantive claim of negligence. The court did allow the inmate time to restate his claim. Steward v. McMickens, 677 F. Supp. 266 (S.D.N.Y. 1988).

The second of the cases specifically involving jails challenged the jail for not purchasing new "civilian clothes" for the inmate when he appeared for trial. The plaintiff appeared at trial in "prison clothes". The court ruled that since the plaintiff had been allowed by the court an opportunity to get civilian clothing from community social service agencies that plaintiff's appearance at trial was not compelled by the jail or the court to appear in prison clothing. U.S. Appeals Court for 11th Circuit upheld the district court findings. Tarpley v. Dugger, 841 F. 2d 359, 109 S. Ct. 101 (cert. denied).

Neither jail case involving access to courts addressed any condition or procedure within the jail itself. No challenge involving access to attorneys or interference with correspondence with the court was decided in 1988.

Of the remaining "prison" cases dealing with access to court, nine cases challenged the district courts dismissal of their case as frivolous. All seven district court findings of the inmate law suits as frivolous were upheld on

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appeal. Three cases challenged the district courts imposition of a filing fee or minor sanction for frivolous filings. Two cases involved the volume or quality of legal services to individuals on death row. One case involved the adequacy of the institutional hearing process in the prison and one case challenged the changes in the inmate legal assistance program.<sup>1</sup>

Of the total number of "access to court" cases involving prisons in 1988, only four challenged correctional institutional adequacy or delivery of legal services.

#### CIVIL RIGHTS ISSUES

1979

Of law suits specifically raised under the title of "civil rights" in 1979, five of seven law suits involved jails. The first of these cases involved a challenge of false imprisonment due to a mistaken identification. Baker v. McCollan, 99 S. Ct. 2689 (1979). The second jail case involved allegations of verbal and physical abuse by staff within the jail. Collins v. Cundy, 603 F 2d 825 (10th Cir. 1979). The third involved a deputy striking an inmate, Dailey v. Byrnes, 605 F. 2d 858 (5th Cir. 1979) and the fourth case found the lack of training within the jail so severe as to be considered "gross negligence" or "deliberate indifference" by the sheriff and the county. Owens v. Haas, 601 F. 2d 1242 (2nd Cir. 1979)

The fifth jail case of 1979 has been the classic case of Bell v. Wolfish, 441 U.S. 520 (1979). The Bell v. Wolfish case laid out numerous substantive and procedural issues and has been viewed as an attempt at clarification of the courts involvement in jail and prison operations.

All of the jail challenges have a substantive basis in specific acts or failures to act on the part of jail personnel. The Baker case was found in favor of the sheriffs office. In Dailey and Owens the sheriff's office was

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found to be liable at least in part and in the Collins case the court found the suit to be frivolous.

The prison "civil rights" cases in 1979 involved the rape of an inmate in a crowded prison, Doe v. Lally, 467 F. Supp. 1339 (D. Md. 1979) and the beating of an inmate by a correctional officer in Lamb v. Hutto, 467 F. Supp. 562 (E.D. Vir. 1979) All of the civil rights challenges of 1979 had a basis in fact that raised issues of prison and jail operations.

### 1988

Civil rights challenges in 1988 involved 24 separate law suits, 5 of the 24 civil rights actions filed in 1988 were against jails. The five cases directly challenging jail operations in 1988 included one challenge of conditions due to overcrowding and the resulting institutional conditions. Albro v. County of Onondaga, 677 F. Supp. 697 (N.D.N.Y. 1988). Three cases involved the failure to protect inmates either due to receiving beatings within the jail Anderson v. Gutschenritter, 836 F. 2d 346 (7th Cir. 1988), and Cortes-Quinones v. Jimenez-Nettleship, 842 F. 2d 556 (1st Cir. 1988) or as in the case of Colburn v. Upper Darby Township, 838 F 2d 663 (3rd Cir. 1988) the suicide of a pretrial detainee.

One of the civil rights law suits against jails in 1988 involved the segregation of an inmate without a due process hearing. The plaintiff was diagnosed as having AIDS. Baez v. Rapping, 680 F. Supp. 112 (S.D.N.Y. 1988).

The 1988 "civil rights" issues involve the pressures of jail crowding, the ability of sheriffs to protect inmates and the segregation issue due to AIDS. These topics do relate to the conditions of confinement. The topics are however qualitatively different than the jail "civil rights" issues raised in 1979. The 1979 "civil rights" law suits against jails involved inappropriate acts by jail personnel in handling inmates and in basic treatment of jail inmates. The

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challenge in Owens exemplifies the others in that the sheriff and county invited liability for failure to provide basic jail training.

The 1988 "civil rights" jail law suits address issues of population pressure and being able to protect inmates not from staff but from one another. The AIDS issues have added a new twist in that the questions are not as to whether they are being given medical care but rather that their "medical" designation has imposed institutional restrictions upon them as a group that are greater than the restrictions placed on the greater jail population.

In beginning to examine the cases to determine if jail and prison litigation differs and the difference from 1979 to 1988, the following is a brief visual summation of the topics between the two years separated by jail and prison law suits within the "civil rights" cases.

Jail Issues 1979 (9 cases)  
False Imprisonment by staff  
Verbal & physical abuse by staff  
Gross lack of training  
Searches by staff

1988 (7 cases)  
Overcrowding  
Beatings by inmates  
Suicide of inmate  
AIDS segregation

Prison Issues 1979 (4 cases)  
Inmate rape  
Beating by a Correctional officer

1988 (24 cases)  
Isolated case of food poisoning  
Appointment of counsel on death row  
Imposition by court of filing fee  
Limitation on filings by court  
Adequacy of administrative hearing  
Unlimited free mail  
Temporary delay in mail  
Failure to provide free teeth cleaning  
Delay in desired dental appointments  
Delay in delivery of free dentures  
Adequacy of prison sponsored legal assistance program

CASELAW REVIEW SUMMARY

What the quantitative change demonstrates over time is obvious. Law suits involving Civil Rights, Access to Courts, Liability, Failure to Protect and Classification have increased beyond the numbers expected given the over-all increase in litigation. A few very basic conclusions can be made as to the move from very specific challenges relating to food, facilities and what may be challenges directed at the specifics of physical surroundings, diet and basic care to a greater emphasis today on questions that are more oriented to challenging the administration, policies and procedures within the jail.

In examining litigation involving jails very few things remain constant. The topics of the legal challenges have undergone quantitative and qualitative change. The question is what has this change been? Have certain legal issues been addressed and resolved? What have the "popular" topics been? What are today's most frequently litigated topics and is there a trend that might allow us to forecast and resolve legal issues before the personal liability attaches to the sheriff, jail administrator, county commissioners, etc.

"Prison" Litigation and "Jail" Litigation

A popular topic among public administrators is loss prevention or loss reduction. The legal cases that get to court and end up being reported in the Federal Reporter system are the worst cases. Primarily the cases showing major deficiencies or errors make it through court. Should jail professionals be making decisions based solely on the worst case situations?

From 1986 through 1989, there were possibly three cases of law suits that resulted in recorded court decisions in the State of Nebraska. Only by manually reviewing the court docket sheets will a person find that there were over 102 federal law suits filed against jails and jail personnel during this time. These figures represent one hundred challenges against jails in which something

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was done right, the jail was sufficient to withstand challenge with the case being dismissed or the situation was so bad it was settled out of court. With all of the federally reported detention and corrections litigation, much of which represents prison litigation, what is the nature of the legal challenges being raised against jails?

The examination of court decisions classified as "civil rights" law suits shows that twenty-five percent of those reported in 1979 involved legal action against jails. In 1989 twenty percent of the "civil rights" law suits involved jails. As the examination continues of law suits involving correction and detention challenges it appears that "jail" cases make up less than twenty-five percent of those cases reported. By initial examination within only two of the fifty litigation topics there appears to be a decline in the "jail" litigation from 1979 to 1988.

#### Jail Law Suit Trends And Jail Standards

One factor that appears to be correlated with a decline in litigation over the past ten years within one state is the adoption and implementation of state jail standards. In 1977 the State Bar of Nebraska compiled a recommended set of standards for jail operations. In 1980 those jail standards were incorporated into law with authority for oversight vested with the Nebraska Crime Commission. Within the State of Nebraska a fairly stable level of litigation was experienced from 1980, with the adoption of state jail standards, until 1986 at which time there were thirty-two law suits filed against jails with the federal magistrate court in Lincoln, Nebraska. The following years demonstrated twenty-nine (29) suits in 1987, 24 cases in 1988 and 17 cases in 1989. A primary question that arises is how many law suits have been filed and how many cases reported in states that have established state jail standards? Are there any other states

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which have state wide jail standards and have experienced a consistent decline in jail litigation.

#### Litigation and Jail Training

A prime area of concern for jail administrators, after that of jail crowding, is the issue of staff skills which correlates to concerns with training. The areas of training that need improvement the most, in the 1988 study, (Research In Action by N.I.J.) include emergency medical procedures, security, AIDS, management training, crisis intervention, interpersonal relations, liability issues, handling special problem inmates and stress management. A serious question arises as to the basis for the information to be included in the the training for areas of need identified in the NIJ study. Is the agenda of jail training based in the litigation? At this point in the research no information has been collected as to the nature of various state jail training programs. No correlation has been made between a states training program and the incidence of jail litigation.

#### What Motivates Change?

When asked what may influence sheriffs and jail administrators to change a situation or condition within a jail the past president of the National Sheriffs Association chose state standards as a prime motivator when presented with a list of influences. The list of influences for change included (1) state standards (2) A.C.A. standards (3) knowledge of a law suit filed against another jail (4) personal observation (5) inmate complaints.

If state jail standards are an objective to be sought what is the goal when they are adopted. Research has not yet identified a historical review of the fate of jail standards among the various states. Has the incidence of jail litigation been different in states that have standards and those states that have adopted standards and then abolished or abandoned state standard efforts.



Summation

The summary of this paper is not easy. Rather than having a definitive statement of findings, the results demonstrate a totally erratic frequency in jail and prison litigation opinions. Initial research indicates that law suits of 1979 are different than the issues being litigated in 1989 and 1990.

The issues within the two topics reviewed in this paper address failures, in 1979, of the system to allow uncensored correspondence with the court and private consultations with attorneys or the physical mistreatment of inmates. The gross lack of training of jail staff was clearly identified as well as the extent that the institution can restrict various human activities..

The 1988 challenges in the areas of "access to court" and "civil rights" addressed the "quality" of institutional life and to what extent might that quality be restricted due to an inmate having been diagnosed as having AIDS. Access to court has been equated by some inmates to having unlimited expense accounts for photo-copy activities and free mailing. The question brought up on appeal in the jail issues weigh heavily on the district courts' findings that the law suit is frivolous. The resulting appeal is questioning the court's assessment not the jail's conditions. The courts are imposing sanctions on inmates for filing frivolous actions.

Three of the "civil rights" deprivation cases in 1988 had to do with the following: whether an inmate gets free dental hygiene teeth cleaning or not, the late delivery of free dentures to a man who entered confinement with only six natural teeth and a third inmate complaining that the twelve dental appointments he had over nine months were not scheduled when he wanted them.

The officially reported actions are the tip of the iceberg. No one can accurately identify the nature of jail litigation. The litigation reported and used to identify what the problems are is 75% to 80% prison law. Very few

efforts exist that attempt to identify "jail law" or a difference between "jail law" and "prison law". The "jail" case decisions handed down may represent 5% or less of the actual total litigation filed against jails.

A per curiam decision in the case of Gabel v Lynangh, 835 F. 2d 124 (5th Cir. 1988) states that 92% of all corrections and detention litigation (for that Federal court) is either dismissed or affirmed in full. Of the remaining cases approximately 5% are reversed and 3% are partially reversed. The court found that "pro se civil rights litigation has become a recreational activity for state prisoners."<sup>2</sup>

Whether prisoners are taking part in recreational litigation or not, efforts must focus on identifying jail law and the trends that have been taking place so that preventative action can be taken to reduce or eliminate potential liability of sheriffs, counties and jail personnel.

In order to have a clear picture of what up-coming issues may be litigated, jail personnel, administrators, sheriffs and county commissions need a solid understanding of the history and trends in jail litigation. This summary ends with questions rather than answers. What is happening in jail litigation?

End Notes

1. Cases found to be frivolous and claims involving access to which the appeal involved challenges to the court rather than the jail during 1988 included:

Gabel v Lynaugh, 835 F. 2 124 (5th Cir. 1988)  
George v King, 827 F. 2d 705 (5th Cir. 1988)  
In Re Tyler, 839 F. 2d 1290 (8th Cir. 1988)  
Jackson v Lane, 688 F. Supp. 1291 (N.D. Ill. 1988)  
Jackson v Wharton, 687 F. Supp. 595 (M.D. Ga. 1988)  
Martinez v Griffin 840 F. 2d 314 (5th Cir. 1988)  
Simmons v Poppell, 873 F. 2d 1243 (5th Cir. 1988)  
Vester v Murray 683 F. Supp., 140 (E.D. Va 1988)  
Whittington v Lynangh 842 F. 2d 818 (5th Cir. 1988)

Three cases involved court fees or sanctions.

Giarratano v Murray 836 F. 2d 1421 (4th Cir. 1988)  
Gittens v Sullivan 848 F. 2d 389 (2nd Cir. 1988)  
Prows v Kastner 842 F. 2d 138 (5th Cir. 1988)

The two cases that raised questions as to the volume and quality of legal services to death row inmates were Giarratano, supra and Longo v Beyer 676 F. Supp. 75 (D.N.J. 1988). The Martinez case, supra, although found frivolous was challenging the state prison administrative hearing procedure.

2. Judges Gee, Garwood and Jones in a note to their holding in Gabel v Lynaugh 835 F 2d 124 (5th Cir. 1988) at page 125.

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