NATIONAL SHERIFFS' ASSOCIATION

legal rights

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Special credit is due to the American Bar Association Commission on Correctional Facilities and Services for their technical contribution to this handbook and to the writing and editing of much of the material it contains.

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Procedure for Imposing Punishment

The jail should have a formal procedure for imposing punishment for violation of jail rules, and the procedure should be outlined in the handbook of rules.

1. For specified minor violations, summary punishment may be imposed.
2. For other violations, the procedure should include:
- **Written notice to the inmate of the charges against him.**
- **An opportunity to prepare a defense to the charges, with the possibility of assistance by legal counsel or some other appropriate person of the inmate's choosing.**
- **A hearing before an impartial tribunal.**
- **An opportunity to present evidence in his own behalf and to confront and cross-examine witnesses against him.**
- **A decision based upon the charge and the evidence produced at the hearing in support or denial of the charge.**
- **A permanent record of the proceedings.**

The nature of jail discipline and the procedures utilized to impose it are very sensitive issues, both to jail administrators and to inmates. The imposition of drastic disciplinary measures can have a direct impact on the length of time an offender serves in confinement by forfeiture of "good time" and yet the administration of some form of discipline is necessary to maintain order within the jail. However, when that discipline violates constitutional safeguards or inhibits or seriously undermines reformative efforts, it becomes counterproductive and indefensible.

Recent court decisions have established the hearing procedure as a basic due process requirement in significant administrative deprivations of life, liberty, or property. There has been considerably less clarity, especially in the correctional context, of what minimal requirements must attend such a hearing. Court decisions have varied in interpretation. At one end of the spectrum they have provided only adequate notice of charges, a reasonable investigation into relevant facts, and an opportunity for the prisoner to reply to charges. At the other end they have upheld the right to written notice of charges, hearing before an impartial tribunal, reasonable time to prepare defense, right to confront and cross-examine witnesses, a decision based on evidence at the hearing, and assistance by lay counsel (staff or inmate) plus legal counsel where prosecutable crimes are involved.

Certain correctional systems on their own initiative have developed detailed disciplinary procedures incorporating substantial portions of the recognized

A Handbook
On

INMATES' LEGAL RIGHTS

The National Sheriffs' Association
1250 Connecticut Avenue, N.W.
Washington, D.C. 20036
1974

Credits

The information contained in this Handbook was compiled by a subcommittee of the Detention/Corrections Committee of the National Sheriffs' Association in two meetings during 1973-74.

The notes and tapes were used by the named writers who produced a draft of this monograph. This draft material was then revised, edited and approved for publication in its present form.

The time spent on this project by persons named below, is greatly appreciated, especially since it was freely contributed in the interest of improving jails for 1974 and beyond.

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Definitions

The National Jail Census of 1970 sponsored by the Law Enforcement Assistance Administration and conducted by the Bureau of the Census revealed that there are 4,037 locally administered detention institutions in the United States which have the authority to retain adult persons for 48 hours or longer. Since these 4,037 institutions represent almost as many units of government, there are inevitably many titles for both institutions and personnel. The following, therefore, are definitions chosen by the Handbook Committee as the most nearly universal and easily understood.

Jail: Any institution operated by a unit of local government for the detention of sentenced and unsentenced persons, whether locally known as jail, workhouse, house of correction, correctional institution, or other title.

Inmate: Any person, whether sentenced or unsentenced, who is confined in a jail.

Jail Administrator: Any official, regardless of local title such as sheriff, jailer, or warden, who has the main responsibility for managing and operating a jail.

Jail Employee: Any individual who performs work in a jail whether full-time, part-time, or volunteer, regardless of title by which he may be known locally, and without regard to whether he wears a uniform.

County Supervisors: Governing body of the county.

Special Note

Nowhere in this handbook is any effort made to distinguish between the sexes, whether they serve as jail administrators, jail employees, or jail inmates.

All standards and principles apply equally to both males and females with only two exceptions, which should be self-evident to all but which perhaps bear restating.

1. Male and female inmates must be separated by substantial architectural arrangements which permit no visual or oral contacts.
2. No male employee or visitor will enter the female quarters in the jail unless advance notice is given and escort service provided by a female jail supervisor.

Where there are women in the jail population a female supervisor is required to be on duty.

Additionally, in this Handbook, little mention is made of juvenile inmates simply because juveniles NEVER should be confined in any jail except in cases of extreme emergency and even then for a period not to exceed 24 hours.

Foreword

Correctional law developed far more rapidly in the last decade than in the previous century. Once judicial attention focused on the correctional process, thoughtful administrators began to reexamine their programs in terms of new decisions and standards. Legislators too considered the need for more specific statutory guidelines.

It is hardly surprising that this judicial scrutiny produced different answers to the same question, and even many different questions. The law has historically developed in this way.

Considerable doubt concerning the "law" of corrections has been the result. The additional development of standards suggesting what "ought" to be has further complicated the problem. This handbook is an effort to glean certainty where this is possible from the many new laws, administrative rules and judicial interpretations.

We hope this publication will answer many of the questions which correctional officers have about the rights of confined persons. We hope that it will contribute to an understanding of the law as it now is and as it may well be in the future. Its use for training and staff development is highly recommended.

But because there has been no slowing down of judicial decisions concerning correctional practices, parts of this handbook will undoubtedly be out of date before it is published. Thus it must be emphasized that it is merely a foundation—not a substitute—for a thorough and on-going program that is kept up to date as new developments occur.

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Introduction

Increasing concern for the legal rights of prisoners has been voiced in recent years by sheriffs, jailers, corrections specialists, government officials, the courts, and, of course, the public. The mere fact that an individual is lawfully incarcerated does not mean that he has lost all of his rights as a citizen. On the contrary, he can be deprived of only those rights which are clearly inconsistent with his status as a prisoner.

Rules and regulations under which a jail is operated must themselves be constitutional. Their implementation is governed by the same strict standard. The law as to rights of prisoners varies from state to state, although rights guaranteed by the U.S. Constitution and federal statutes are applicable nationally. The law changes from day to day as legislation is enacted and court rulings are announced.

The rights of prisoners over which a sheriff or jailer has any control generally involve the operation of the institution itself. Since most aspects of a prisoner's life while he is confined are subject to regulation, the protection of his rights is essential. Accordingly, each sheriff or jail administrator should issue and periodically update a manual of rules and regulations covering the operation of his institution, in which the rights of prisoners are specifically set forth. When this manual has been drafted, it should be reviewed by the local district attorney or other competent legal counsel to insure that it complies with current state and federal law. These rules and regulations in written form should be given to every staff member and to every prisoner on his admittance to the institution. The manual should be reviewed periodically to insure that it is current with reference to the law concerning rights of prisoners.

Steps should be taken to insure that all jail personnel know the rules and regulations of the institution and follow them meticulously. Discussion of these rules should form an important part of the training program for new personnel. Since new developments are occurring on a continuous basis, legal rights and responsibilities should be an ongoing component of the jail's in-service training program.

To assist sheriffs and jail administrators in developing manuals for their institutions the following standards should be considered. The commentary provides, in each case, what we hope is useful insight into the meaning and rationale of the standard itself.

1
Personal Safety and Welfare

A primary right of a prisoner relates to his personal safety and welfare. Enforcement of this right is the responsibility of the sheriff and the jail staff, and failure to enforce it may result in legal action against them.

1. The sheriff and the jail staff are responsible for preventing mistreatment of prisoners by jail personnel or by other inmates.
2. It is also necessary to prevent theft or destruction of a prisoner's personal property.

A prisoner entering jail is necessarily placed under the strict supervision of the sheriff and his staff. The sheriff controls not only the prisoner's freedom but also his food, clothing, medical care, and access to the outside world. Because the prisoner is completely dependent on jail personnel for his basic needs, the sheriff becomes responsible for maintaining his charge's personal safety and general welfare. If this responsibility is not fulfilled either intentionally or through negligence, the sheriff can be held legally liable.

The sheriff is responsible for providing adequate clothing, food, bedding, light, ventilation, heat, exercise, and hygienic necessities. He cannot refuse medical treatment to a prisoner who is in obvious need of such help. Affirmative action and willful neglect that impair the physical or mental health of an inmate are equally prohibited. (See Right 3.)

The sheriff must make certain that corporal punishment is not used and that prisoners are not injured by members of the staff or others. Intentionally inflicting corporal punishment usually results in liability for any injury to the prisoner, whether or not such action was malicious. Under such circumstances, simple intent to strike the prisoner is sufficient ground for legal liability. If a sheriff knows of a guard's tendency to mistreat prisoners, and does nothing to control it, the sheriff can be held liable personally even if he did not inflict the injury and was not present when it occurred.

Injuries inflicted by fellow inmates are another potential problem for the sheriff and his staff. A sheriff must exercise reasonable care to protect inmates from injuries inflicted by their fellow prisoners. He can be held legally liable for these injuries if he knew, or reasonably should have known, that they were taking place or were likely to take place. Some state statutes impose an even higher standard of care.

There are several common situations which pose great potential legal liability to the sheriff. Failure to discover weapons while searching a prisoner prior

to placing him in contact with others if subsequently used can lead to liability. Similarly, allowing prisoners access to dangerous objects such as sharp metal or glass bottles has been held to be actionable negligence.

Another common situation involves prisoners who are insane, drunk, or excessively violent. If they are placed in proximity to other inmates and death or serious injury results to any one of them, the sheriff may be held liable unless he can prove he had no way of knowing of the danger.

The law is slightly less clear when personal grudges are involved. If one inmate makes it known that he fears attack by another and this attack actually occurs before the sheriff takes any action, the sheriff may be liable for his negligence. Such situations should be carefully evaluated and appropriate action taken on a timely basis.

Finally, if the sheriff knows or approves of the use of a "kangaroo court" to maintain discipline and a prisoner is subsequently injured because of this practice, the sheriff will under most circumstances be held liable. (Right 10.)

2
No Cruel and Unusual Punishment

A prisoner has the right to be free from cruel and unusual punishment.

1. No beating, striking, whipping, or other acts may impose physical pain on a prisoner.

2. Jail personnel may use only that degree of force which is necessary to defend themselves, to prevent a criminal act by a prisoner, or to maintain order.

The right of citizens to be free from cruel and unusual punishment is clearly stated in the Eighth Amendment of the Constitution. This right has been expanded to the states through the due process clause of the Fourteenth Amendment and is also found in most state constitutions. Although the prohibition was originally thought to apply only to sentenced prisoners, recent court decisions make it clear that this covers any unusual punishment and treatment.

The courts have established several tests to determine whether or not punishment is cruel and unusual. The most common tests are:

- Is the punishment so inherently severe as to transcend elemental concepts of decency or shock the conscience?
- . . . Is the punishment excessive for the infraction of the prison rules for which it is imposed?
- . . . Is the punishment arbitrarily imposed?

The sheriff can answer these questions himself to help determine whether punishment or treatment is cruel or unusual.

The use of physical force for purposes of retaliation or punishment has been widely condemned by the courts and is almost certain to subject the jail personnel to legal liability. Corporal punishment such as beatings, whippings, and the use of straps or clubs is universally condemned. In addition, courts have said that the use of a "teeter board," "tucker telephone," exposure to extreme heat or cold, handcuffing to cell doors or parts, standing "on the line" for excessive periods of time, and the deprivation of sufficient light, ventilation, food, or exercise necessary to maintain physical or mental health constitute cruel and unusual punishment. Measures designed to make a psychological impact may also be so potentially harmful as to warrant limitation.

Correctional experts generally agree that the best, and only acceptable, forms of punishment are deprivations of privileges. This type of punishment lessens the chance of retaliation or lawsuits.

The question of when physical force can be used on prisoners is one of the most common problems in jail administration. Generally, force should be used

only for prevention of injury to others, never for punishment. Specifically, physical force may be used by jail personnel *only* when it is necessary for self-defense, to protect other prisoners, to maintain order, or to prevent escape or a riot. Even then, only the smallest degree or amount of force which is required to accomplish these ends under the circumstances is justified. For example, a guard is not entitled to strike a prisoner with a night stick for talking back to him. Neither would he be justified in gassing an inmate in his cell to stop noisemaking. In short, the force used must be reasonable in view of the offense and the surrounding circumstances.

For further discussion, see Rights 8 and 10 in this publication and the handbook in this series on Security and Discipline.

3
Healthful Environment

Prisoners have a right to a healthful environment, to include:

1. Nutritious and well-balanced diet.
2. Adequate medical and dental care rendered promptly when needed.
3. An acceptable level of sanitation, including bedding, clothing, and laundry service; provisions for personal hygiene, toilet articles, and an opportunity to bathe frequently; proper ventilation, fresh air, heating in winter months, and light.
4. Reasonable opportunities for physical exercise and recreational activities.
5. Protection against physical or psychological abuse or indignity.

In recent cases brought to enforce inmates' rights in the jail setting, the most consistently recurrent complaint has been the failure of these institutions to maintain the health and safety of their occupants. Often, much of the failure can be traced directly to an antiquated and neglected physical plant, a problem characteristic of many county and local jail facilities. Chronic overcrowding is given as a major obstacle to the physical care and protection of inmates and the failure to provide adequate and sanitary housing. Multiple occupancy cell assignments establish a condition which precludes the provision of adequate supervision and is generally unsafe for inmates. Insufficient resources and inadequately trained custodial personnel are repeatedly cited as reasons for the lack of adequate medical and dental care, as well as for the absence of recreational programs and facilities.

But while all these conditions and problems may prevail in a given institution, they do not alter the responsibility of the jail administrator to fulfill the right of each person in custody to a healthful and safe environment. The duty of the jailer is not simply to keep secure those entrusted to his custody, he must care for them as well.

Each of the following categories of inmate care and protection listed is an integral part of the comprehensive goal of providing a healthful institutional surrounding. The legal foundation of the various rights is simply that failure to provide the essentials to maintain individual health violates the Eighth Amendment's ban against the infliction of cruel and unusual punishment.

All of these matters are considered in greater detail in other handbooks in this series. But the inmate's legal rights to them must always receive priority consideration.

1. NUTRITIOUS AND WELL-BALANCED DIET IN ADEQUATE QUANTITIES

Perhaps most basic to the health and well-being of any individual is a nutritious and well-balanced diet. Thus the methods, techniques, and standards employed in food preparation, food service, and the menu-planning process should be professionally established and supervised. At a minimum, it is essential to secure the inmate's right to a healthful diet in these ways:

- Each inmate should have the opportunity to have three nutritionally balanced meals a day. Food should not be denied as a form of punishment or for any other reason unless an inmate is intentionally misusing food by throwing it away or refusing to eat. Even if food is denied under those circumstances, the nutritional needs of that inmate should be met to the fullest extent possible by the use of vitamins and food substitutes.
- Every reasonable effort must be made to have food served in a hygienic and palatable manner.
- Food should always, where appropriate, be served cold or hot.
- Special diets to meet medical needs (e.g., diabetic, salt-free, pregnancy) or for religious purposes should be provided.
- The food service department should be maintained in a clean, orderly, and safe condition.
- A professional nutritionist should be consulted for menu preparation to assure that the diet contains all the elements necessary to maintain health and well-being.

As with most of these minimum standards, the jail administrator must take into consideration the special problems presented by the physical plant, the inmate population, and the location of the particular institution. For example, in the southern part of the country where the climate is a factor, special care must be exercised to prevent food spoilage and to maintain sanitation and cleanliness in the food preparation areas of the institutions. Kitchens, in every instance, must be operated in accordance with the highest standard, including periodic staff training in food preparation and handling.

See also the handbook in this series on food programs in jails.

2. PROMPT AND ADEQUATE MEDICAL AND DENTAL CARE

Every inmate has a right to receive proper and timely medical treatment and care. This includes health services which guarantee the physical, mental, and social well-being of the inmate as well as the capacity to deliver immediate medical treatment for specific diseases or illnesses or in emergency situations. At a minimum, this suggests that complete physical examinations be administered to all inmates as part of the admission process and at specified intervals thereafter; that all operational jail personnel be trained in first-aid work and be capable of identifying illnesses or symptoms, especially those which require emergency medical care, with a qualified physician on call at all times; and that a daily sick call procedure be set up to assure each person the opportunity to receive prompt and adequate medical attention for illness or injury.

Other specific practices and procedures directly related to the adequacy of medical care such as those dealing with the dispensation of medication, medical recordkeeping, procurement of medical supplies, and emergency hospitali-

zation arrangements, are equally important to the overall medical delivery system. Generally, it may be said that the health care within the jail should be comparable in quality and availability to that obtainable by the general public. Thus, for example, since preventive medicine is recognized as a critical ingredient to the comprehensive health care of free citizens, it is imperative that such techniques and services be equally available to jail inmates.

Federal courts, in particular, have been turning an increasingly sympathetic ear to institutional conditions which present a grave and immediate threat to the inmate's well-being. For example, a federal court recently found that the failure of a state board of corrections to provide sufficient medical facilities and staff constituted a willful and intentional violation of the rights of prisoners guaranteed by the Eighth and Fourteenth Amendments.

In addition to those situations where the denial of medical care is systematic and pervasive, courts have been responsive to other inmate claims of a more particularized nature. For instance, where forced work has either caused injuries to an inmate or aggravated existing injuries, several courts have awarded relief. It is also well established that where an admitted inmate is under a preexisting prescribed regimen of medical treatment, the jailer is duty bound to ensure that such treatment is continued during confinement.

Finally, a number of cases have documented the fact that proper medical treatment is often denied to inmates confined to isolation or segregation cells. Since the conditions which characterize these units are almost invariably harsher than those found in other areas of the facility, there is greater likelihood that medical emergencies or other medical problems will occur.

In each situation described above, the central duty of the jailer is to assure that the medical preventive, diagnostic, and treatment procedures, facilities, and personnel are such that the individual well-being of those confined is reasonably assured.

3. ACCEPTABLE LEVELS OF SANITATION, HOUSING, PERSONAL HYGIENE

It is essential to inmate health that the institutional surroundings be clean and sanitary. Procedures and schedules should be established for the maintenance and cleaning of the institution, so that it complies with state and local health standards.

It is also essential that individual inmates be afforded the opportunity to maintain personal hygiene. Thus jail administrators have a responsibility to make available to inmates those personal hygiene items which are necessary to maintain basic standards of health, sanitation, and well-being. Where inmates cannot afford essential items such as soap, toothpaste, toothbrush, etc., these things should be supplied by the institution.

Other measures to insure individual hygiene are equally important. For instance, all inmates should be required to bathe at least twice a week and should have the right to bathe daily, regardless of custody status. Laundry facilities and services should be provided, blankets periodically cleaned, and mattresses periodically fumigated or replaced. Individual cells should be properly equipped (i.e., with washbasin, hot and cold running water, properly functioning toilet), and the cleaning implements necessary to keep the cell in a sanitary condition provided.

As noted earlier, although many jails are antiquated structures and as a result are often in a state of disrepair, without proper lighting, ventilation, plumbing, and heating equipment, this does not alter the legal responsibilities of the jail administrator to provide a healthful environment.

While many jails are severely overcrowded, some to the breaking point, courts have begun to look at the established rated capacities of these institutions and to enforce compliance with those standards. Indeed, several courts have ordered institutions to reduce their populations to lawful capacities in accordance with a strict timetable.

Courts have also begun to require a specific amount of square footage of housing per person confined in a jail.

See also the handbooks in this series on sanitation and on jail architecture.

4. REASONABLE OPPORTUNITIES FOR PHYSICAL EXERCISE AND RECREATIONAL ACTIVITIES

Of special importance to the health and well-being of the jail inmate is the provision of a diversified recreational program with adequate outdoor and indoor facilities. The necessity and value of such program is well documented both by studies and by court decisions. At least one court has found that the absence of recreational opportunities for inmates constitutes a *per se* violation of the Eighth Amendment's ban against cruel and unusual punishment. In another recent decision, a court adopted a finding that a permanent recreation program was essential to the proper administration of a jail facility and ordered that each inmate should be provided a minimum of one hour of recreation off the tier at least five days a week. To achieve that goal, the court ordered that an indoor recreational area be constructed and additional security personnel be hired. Such decisions underscore the importance of recreation programs.

5. PROTECTION AGAINST ANY PHYSICAL OR PSYCHOLOGICAL ABUSE

Inmates have a right, secured by the Eighth and Fourteenth Amendments, to be reasonably protected from physical assault or threat of assault by other inmates. The standard which courts will now apply in determining whether jail officials have discharged their responsibility in protecting inmates from other inmates is (1) whether there is a pervasive risk of harm to inmates from other prisoners, and, if so, (2) whether officials are exercising reasonable care to prevent prisoners from intentionally harming others or from creating an unreasonable risk of harm.

Although there is need to protect weaker inmates from exploitation by the more aggressive and to protect all inmates' personal belongings, the restrictions on inmate movement (including locking an inmate out of his cell) and the security measures employed should be limited to that degree necessary to provide inmate protection.

4
Right to Remain Silent

A person in detention retains his right to remain silent.

No duress, harassment or coercion of any kind can be used to obtain information from him regarding the charge on which he is being held.

The right of the accused to remain silent or stand mute is a principle in our criminal justice system. The police may not violate this principle by any means. The sheriff and jail staff have no greater right in this regard than the arresting officers. Of course, an inmate can hardly expect privacy in the jail, and anything he voluntarily says may be used against him.

The right to remain silent is, however, subject to the practical limitation that the inmate should assist in assuring his own proper treatment by cooperating with the admission personnel at the jail. Identification data and some kind of medical history are essential to the prisoner's welfare and the proper functioning of the jail.

The individual inmate has no overriding interest in remaining silent as to such matters. (This might not be the case where one is charged, say, with a narcotics-related offense and the admitting officer inquires whether he uses drugs.) The individual's and society's rights are best balanced in this regard if medical personnel perform the medical screening and the pertinent records are treated as confidential.

When an individual will not cooperate with the intake procedures, the protection of other inmates requires that the individual be screened off from the general population to assure individual safety and institutional security.

5
Right to Communicate With Family and Attorney

During the admission process at the jail, a person has a right to communicate with a member of his family (or possibly a close friend) and with his attorney by making a reasonable number of unmonitored telephone calls or in some other reasonable manner.

This right reflects the long-standing revulsion in this country to secret arrests and a recognition that places of confinement in themselves are somewhat coercive.

Although the facts will vary in each case, the opportunity to make outside contacts should be afforded the detained person at the first practical opportunity during the admission process. What is a reasonable number of calls? Again, there can be no hard and fast answer. The time of day, the day of the week, and similar factors will all influence whether one or three or five calls will be needed to locate and advise counsel and family. Whether the individual is from the community or from a remote town is another important factor.

Frequently, persons are admitted to jail who are unable to call for help on their own behalf—for example, a drunk. In such circumstances, a member of the jail staff must try to do this if possible. If the inmate can be identified, a call to his family would be appropriate. If his identity is unknown, a call to the local public defender or similar organization should be made.

Since the content of telephone calls must not be monitored, whether the inmate speaks in English or another language should not be of concern to jail staff.

When the telephone cannot be used for making contact, telegrams may be deemed reasonable under some circumstances or a patrol vehicle may be dispatched to notify an inmate's family when there is no telephone in his house or that of a close neighbor.

6
Presumption of Innocence for Prisoners Awaiting Trial

Persons held in custody while awaiting arraignment or trial are presumed innocent until convicted in a court of law, and their rights have generally been found by the courts to be broader than those of a convicted and sentenced prisoner.

The law generally recognizes the principle that a person sentenced for commission of a crime should retain all the rights of a free citizen except those necessarily limited because of confinement. A person not yet convicted has an even stronger claim to retention of such rights.

Persons awaiting trial are not in the same class as those serving a sentence. They should be treated as much like those persons released on bail or other form of pretrial release as confinement permits. Where it is asserted that confinement requires modification of the rights of unsentenced inmates, the burden of justifying it is on the detention agency. Only the least restrictive means needed to accomplish the state's interest can be justified.

The rights of sentenced inmates are fully applicable to persons detained awaiting trial. These rights include: full access to courts and legal services; protection against various forms of physical abuse and inhumane treatment, healthful living conditions; procedural protections against arbitrary administrative action; and substantial rights of free speech and expression. (See Rights 2, 3, 15, 16.)

Additional rights are granted to those awaiting trial. First, pretrial inmates should not be housed with convicted offenders; and second, they should not be placed in punitive segregation except in the most exceptional circumstances.

Full implementation of this right has both a negative and positive aspect. Persons awaiting trial in detention should not be required to participate in any program of work, treatment or rehabilitation. (Requiring an inmate to maintain *personal* cleanliness does not violate this principle.) Since the sheriff is only the custodian of the pretrial detainee and not his master or employer, required work or program participation is improper. But educational, vocational, and recreational activities should be available on a voluntary basis.

In addition, programs for dealing with drug addiction or alcoholism are highly desirable if they can be provided. Similarly counseling services to help with marital, financial, and other problems are recommended. But participation in such activities must be on an assured basis of confidentiality to guarantee that the ultimate determination of guilt will not be prejudiced thereby.

Properly interpreted, this right requires more than mere passivity on the part of the sheriff. Consider voting by pretrial detainees, for example. No jurisdiction deprives unconvicted persons of the right to vote. Yet registrars typically do not come to the jail to register inmates to vote, and special polls are seldom set up in jails on election day. The sheriff can be instrumental in working with the county supervisors or other proper officials to see that confinement does not work a forfeiture of the fundamental right to vote.

7
No Racial Segregation

Any racial segregation in a jail is unconstitutional.

The ban against racial segregation extends to any discriminatory treatment based on an inmate's race. All racial and ethnic groups must be treated equally and have the same opportunities for program selection, work and housing assignments, and access to correctional resources.

The most difficult problem a sheriff will have in his efforts to avoid discrimination will be in avoiding practices which seem to be unobjectionable but which are discriminatory in their effect. Books, newspapers, and magazines concerned with the interests of all groups should be provided.

A specific practice which results in discrimination for necessary security might be justifiable. However, the Supreme Court has indicated that a sheriff will have a "heavy burden" of showing a "compelling interest" of security to sustain the practice. Courts have been sympathetic to claims of racial tension, imminent violence, and danger to outnumbered members of racial or ethnic minorities. Racial tension alone is not a sufficient cause for segregation, although a sheriff should do everything that is possible to provide a greater degree of protection and security within the jail so that segregation can be avoided. In the event that violence does occur or is an immediate danger, segregation may be used for "a limited period" only. There is no justification for complete and permanent segregation in a jail.

It is not necessary to have a precise mathematical distribution of the races and ethnic groups throughout the jail. As long as no steps are taken by the sheriff to separate a particular racial or ethnic group, a reasonable balance in the composition of living groups, work groups, and other associations will be sufficient, again taking into account the fact that racial and ethnic identification may play a part in voluntary groupings.

Segregation by race may give rise to a suit to halt the practice. If the jail or sheriff's department is receiving federal funds, administrative measures to cut off such money may also be taken by the agency making the funds available. Such action may also be instituted when hiring or other personnel practices are subject to varying standards depending on race. The Law Enforcement Assistance Administration has comprehensive guidelines regarding nondiscriminatory program practices.

8
Discipline Consistent With Due Process

Every jail must have a system for maintaining inmate discipline which is consistent with constitutional requirements for due process.

1. The first step toward such a system is to compile a clear and comprehensive set of rules which explain the required standard of conduct, define behavior which would be in violation of the rules, and indicate the penalty for proven violations.
2. Each inmate should be given a copy of the rules, and they should be read to or explained to inmates unable to read.
3. Jails with sizable populations who speak a language other than English should arrange to have the rules translated.

A jail is a society in microcosm. As in the larger society of which the jail is a part, there must be a system of rules to facilitate the maintenance of order.

Since participation in the jail community is not voluntary, however, we cannot depend on common consent to assure that there will be adherence to the rules. For that reason, jail administrators have long found it necessary to develop a system for enforcement. The basic need for disciplinary systems has never been questioned. This right follows the line rather firmly drawn in the cases.

First, the rules of the jail must be sufficiently clear and precise to guide the behavior of the persons subject to them. They must tell someone who wants to obey the rules what he must do and not do. They must also inform him of what will happen if he fails to obey the rules.

These regulations should cover all aspects of the jail environment, activities, and services. The rules should emphasize the prisoner's responsibility for his behavior relating to visiting, correspondence, personal hygiene, sanitation, food services, medical care, laundry, recreation, commissary, library service, educational opportunities, counseling and guidance, housekeeping care of facility and equipment, and the treatment of jail personnel and other inmates. Inmates who violate the regulations by such activities as dealing in contraband, destroying reading materials, stopping up plumbing, cutting mattresses and sheets, refusing to maintain neat and clean living quarters, or mistreating staff and other prisoners should be disciplined according to the established procedures for handling such infractions and *only* according to these procedures.

Second, the rules should be printed or typed, and each inmate should receive a copy. It is generally considered unfair to punish a person for something he

does not know he is forbidden to do. Only by giving each individual a copy of the rules can the sheriff be sure that everyone has knowledge of them. The desire to impart this knowledge leads to the subsidiary requirements that the rules should be read to illiterates and that they be translated into a foreign language in institutions which have large populations who normally use language other than English. In many parts of the country that language will be Spanish. Finally, a receipt should be obtained that the inmate has received a copy and understands it.

Third, the rules should promote or protect an important interest of the jail. This would rule out punishing mental attitudes or unspoken words. Any rules which venture beyond observable conduct are fraught with danger of abuse, since enforcement will depend on each person's individual interpretation. Rules which are trivial in their intent engender hostility and lack of respect for the jail staff.

Fourth, the rules should be enforced with penalties related to the gravity of the offense. The notion of "proportionality" to which the criminal law is increasingly adhering is particularly applicable in the jail setting. A few court decisions have voided punishments on the sole basis that they were excessive in relation to the offense.

The underlying principle is that fundamental fairness requires that a warning be given prior to the imposition of sanctions for misbehavior. Although the guidance given above should enable the sheriff to institute a system which avoids charges of "inadequacy," only continuous review and monitoring of the rules will keep them current and meaningful.

See also the handbook in this series on security and discipline.

9
Procedure for Imposing Punishment

The jail should have a formal procedure for imposing punishment for violation of jail rules, and the procedure should be outlined in the handbook of rules.

1. For specified minor violations, summary punishment may be imposed.
2. For other violations, the procedure should include:
- **Written notice to the inmate of the charges against him.**
- **An opportunity to prepare a defense to the charges, with the possibility of assistance by legal counsel or some other appropriate person of the inmate's choosing.**
- **A hearing before an impartial tribunal.**
- **An opportunity to present evidence in his own behalf and to confront and cross-examine witnesses against him.**
- **A decision based upon the charge and the evidence produced at the hearing in support or denial of the charge.**
- **A permanent record of the proceedings.**

The nature of jail discipline and the procedures utilized to impose it are very sensitive issues, both to jail administrators and to inmates. The imposition of drastic disciplinary measures can have a direct impact on the length of time an offender serves in confinement by forfeiture of "good time" and yet the administration of some form of discipline is necessary to maintain order within the jail. However, when that discipline violates constitutional safeguards or inhibits or seriously undermines reformative efforts, it becomes counterproductive and indefensible.

Recent court decisions have established the hearing procedure as a basic due process requirement in significant administrative deprivations of life, liberty, or property. There has been considerably less clarity, especially in the correctional context, of what minimal requirements must attend such a hearing. Court decisions have varied in interpretation. At one end of the spectrum they have provided only adequate notice of charges, a reasonable investigation into relevant facts, and an opportunity for the prisoner to reply to charges. At the other end they have upheld the right to written notice of charges, hearing before an impartial tribunal, reasonable time to prepare defense, right to confront and cross-examine witnesses, a decision based on evidence at the hearing, and assistance by lay counsel (staff or inmate) plus legal counsel where prosecutable crimes are involved.

Certain correctional systems on their own initiative have developed detailed disciplinary procedures incorporating substantial portions of the recognized

elements of administrative agency due process. The standard largely follows this trend, emanating from both courts and correctional systems, toward more formalized procedures with normal administrative due process protections in the administration of correctional discipline.

The discipline system is separated into a formal and an informal component. Although formal procedures are not indicated for the latter concept, fundamental fairness requires limits on the summary process. These have generally been expressed in terms of the punishments which an individual staff member may impose. Commonly, these are limited to reprimand, or loss for not more than 24 hours, of such privileges as recreation, commissary, or entertainment. Other sanctions may be used, but they must clearly be minor.

Even in the case of summary punishment, some protections of due process apply. For example, an officer cannot be arbitrary in applying the rules or apply them differently in the case of different inmates. Fair and evenhanded treatment is essential. Even though no formal reports may be filed, the officer must advise the individual concerning what he did wrong, and he must give the inmate a chance to deny or explain the incident. If the offender requests it, the disciplinary tribunal rather than the observing officer should settle any contested questions of fact. The inmate should not be punished more severely by the disciplinary board than if he had accepted the officer's judgment.

In any case where summary punishment is not appropriate, the listed safeguards come into play. Several observations are appropriate. First, although many of the procedural elements found in a trial are listed, it is not intended to, nor does it, imply that the formality of a trial is required. Since the personnel involved are not trained and skilled as lawyers, the rigid adherence to due process which is appropriate to trials is not expected. What *is* required, however, is a good-faith effort to proceed against the accused inmate in a fair and impartial manner so as to reach an accurate and informed judgment.

It is important to note that jail personnel are in charge of the hearing process. Hearings are not an abdication of control but an exercise of it. Although the inmate must be allowed to present his case or side of the story, testimony which is merely duplicative (and therefore time-consuming) need not be allowed. When the tribunal agrees to accept evidence without testimony, there is one important consequence: The unheard testimony must be treated as true and if not controverted on the record by substantial contrary evidence, then the facts not heard must nevertheless be deemed to be true.

The staff also retains controls to protect witnesses. When there is a reason to believe that revealing the identity of a witness will subject him to harm, his identity can be kept from the inmate. In such cases, however, someone else must interrogate the witness on the inmate's behalf so as to fully test the truth of the evidence presented. If the inmate has counsel (or some substitute such as law student, lay advocate, or staff member) that individual may interrogate the witness. If the inmate is conducting his own defense, the hearing officer or board must undertake this task.

It should go without saying that the decision must be based on the evidence produced at the hearing rather than the reputation or past behavior of the inmate. The requirement of a written decision and record is an important guarantee of this fundamental requirement since it provides a basis for subsequent review of the process and decision. Generally, the sheriff will not be

involved in the hearing, and there should be a right of appeal to him.

The keystone is the conduct of the hearing by a fair and impartial body. Although a single person is sufficient, it is frequently suggested that three individuals make up the tribunal, so that divergent experiences and views can come into play. In jails with a very small staff, consideration will have to be given to involving outsiders in the process if the standard of impartiality is to be met.

Discipline is a major subject of another handbook in this series, which should be consulted.

10
No Discipline of Prisoners by Prisoners

Inmates should not be subject to a "kangaroo court," a "barn boss" system, or any other arrangement that utilizes prisoners to maintain discipline.

At one time, it was a common practice to use such a system in city and county jails. Sheriffs designated inmates as "barn bosses" or "trusties" to make certain that jail rules were observed and sanitation was maintained. "Kangaroo courts" were set up to punish those inmates who refused to observe the rules and obey their "barn bosses." The barn bosses selected were those who, the sheriffs thought, would best be able to maintain order. The system was thought to be an efficient way in which to keep order and free the sheriff for other duties.

Today the use of such practices has been roundly condemned by both correctional experts and the courts. The dangers and potential abuses of this system are many and obvious. Not the least of the deficiencies (from the sheriff's point of view) is the fact that a sheriff may be held liable for injuries sustained by the inmates as a result of punishment meted out by a "kangaroo court."

The sheriff also risks substantial legal liability by maintaining such a system. A sheriff who utilizes trusties to maintain discipline may be found negligent if any of the trusties take advantage of the situation to inflict beatings on others. The sheriff need not be present at such a beating or even be aware that it is taking place to be held liable. As long as he knows that such a system exists, he is responsible for controlling it.

In order to avoid the potential abuses and liabilities, trusties should never be placed in a position where they can reward or penalize other inmates. This also includes access to inmate records, assisting in cell searches, access to the outside where contraband can be smuggled in or out or escapes facilitiated, or control over the use of medical, vocational, or recreational facilities.

11
Segregated Confinement

An inmate may be placed in segregation at his own request (protective custody), as punishment for violation of a jail rule (punitive segregation), or as an administrative measure (as during an investigation or to prevent self destruction). Regardless of the motivation, segregation has an inherently punitive quality that requires the imposition of special safeguards.

1. Except in emergencies, segregation should be imposed only after a full hearing. No inmate should be kept in segregation more than one hour without the express authorization of the highest ranking official on duty, and the sheriff or jailer must be advised of the prisoner's status at the earliest practical moment.

2. Conditions of segregation should meet the following standards:

- *The cell should be as large as others in the jail. It should be clean, well lighted, and with adequate heat and ventilation. It should be provided with a toilet, bedding, water for drinking and washing. The inmate may be moved to an unequipped cell if it is necessary to prevent suicide or other self-destructive acts or damage to the cell or equipment.*
- *Every segregated prisoner should receive the same meals as those provided to the rest of the jail population.*
- *Under no circumstances should a prisoner in segregation be deprived of normal jail clothing except for his own protection. If such deprivation is temporarily necessary, he should be provided with a one-piece garment and bedding adequate to protect his health.*
- *Segregated prisoners should be able to maintain the same level of personal hygiene as other prisoners. They should be provided with the same toilet articles and have the same bathing and shaving schedule as the rest of the jail population.*
- *Prisoners in segregation should be given an opportunity for exercise and should have the same rights to mail and reading matter as other prisoners.*
- *When a seriously disturbed prisoner is placed in segregation, the medical officer should be notified immediately. All segregated prisoners should be examined by medical personnel upon being placed in segregation or within 24 hours thereafter and also upon discharge from segregation. Regular visits by medical personnel every 24 hours may be omitted if the prisoner can see such personnel at sick call.*
- *The length of segregation will depend on the underlying cause and the inmate's behavior while segregated. Except in the most unusual circumstances (and then only on authorization of the sheriff or jailer) a prisoner should not be kept in segregation as punishment for more than 10 days for any one offense.*

The cases of inmates in administrative segregation or those in protective custody should be reviewed at least every two weeks.

- *Writing and visiting privileges should not be denied prisoners in segregation, except in unusual and specific circumstances which do not extend to access to the courts. An uncontrollable prisoner obviously should not be permitted visits under normal conditions. However, if it is felt that a visit may be beneficial, it could take place in some secure area.*
- *A log must be maintained and the staff in charge of the segregation unit should be responsible for recording all admissions, releases, visits to the cell, medical care, disciplinary board action, and any unusual events concerning a segregated prisoner. Such records are essential to the proper jail administration and would be helpful in the event legal action is filed by prisoner or his family.*

Probably no single correctional practice has caused as much controversy and as many lawsuits as the use of solitary confinement (segregation). Although the courts have never ruled that such confinement is cruel and unusual punishment in and of itself, numerous decisions have declared specific conditions of segregation to be forbidden as cruel and unusual punishment. In addition, the practice is condemned by many groups with correctional interests.

Segregation should be used only when it is absolutely necessary to protect the health and safety of the prisoner, other inmates or members of the jail staff. One reason for severe restrictions on the use of segregation as a means of discipline is the almost universal agreement that it is *not* an effective means of punishment. In addition, it is frequently illegal.

In any case, before a man can be placed in segregation (except when immediate action is required by emergency conditions or as protection) he must be given a hearing. At the hearing he should be given full due process rights, such as notice of charges, an opportunity to present testimony and witnesses in his own behalf, and the chance to cross-examine adverse witnesses. The hearing should be held before an impartial individual or board which does not include the complaining officer. At the conclusion of the hearing, the prisoner should be given a written decision and finding of facts. The inmate should be allowed to obtain an attorney or lay counsel to help him prepare his case, if he so desires.

If it is the decision of the board to confine the inmate in segregation, the conditions in which he is confined should meet certain minimum standards. It should be remembered that failure to observe the standards listed is likely to result in legal liability. Courts have become increasingly sensitive to conditions which are unnecessarily harsh or inhumane. Any condition not necessary to maintain discipline which imposes additional discomfort on the inmate is likely to be considered unacceptable by the courts and should be avoided.

There are several practices which courts have consistently condemned as violating the "cruel and unusual punishment" clause. A filthy cell, inadequate toilet facilities, and denial of basic hygiene tools such as soap, water, toilet paper, and toothbrush have been widely condemned. It is also impermissible to deny a prisoner adequate clothing or bedding. Several decisions have outlawed making inmates sleep on the bare floor or subjecting them to extreme cold while nude. No prisoner should be placed on a restricted diet either in terms of the number of meals or the size of servings at the meals. The prisoner should have adequate heat, ventilation, and light.

12
Consultation With Attorneys

A prisoner has the right to consult with his attorney privately at the place of confinement as often and as long as necessary. If there is a genuine possibility of violence or escape by the prisoner, he may be kept under observation, but his conversation with his attorney cannot be monitored.

Since a majority of the inmates in jail are pretrial detainees, according to the 1970 National Jail Census, most inmates and their attorneys are in the process of preparing for trial. To be effective, an attorney must know both the facts and the law involved in his case. Unless the facts are developed fully, legal analysis may prove fruitless. Any jail rule which limits counsel's ability to provide effective assistance through appropriate investigation and regular contact with the inmate, in effect denies inmates their right of access to the courts.

Although it might appear there are no limitations on attorney's visits, it is reasonable that such visits be interrupted by demands of jail operation such as inmate counting and fixed meal times. In other words, the time and place of inmate's consultations with attorneys may be governed by reasonable regulations as long as they do not work a hardship on an inmate or his attorney.

While it is acknowledged that many jails are too small to accommodate many attorney-inmate consultations at one time, every effort should be made to facilitate privacy between an attorney and his client. All visits should be permitted without the use of mechanical barriers, such as bars or a screen between attorney and inmate or the use of telephone to communicate with each other.

It is reasonable that each attorney on entry register his name, address, and purpose of his visit. He may also be subject to a reasonable search if deemed necessary. Furthermore, a jail may make legitimate dress regulations for visitors to prevent problems of identification between inmates and visitors. Such regulations may prohibit visitors from wearing clothes similar to those worn by the inmates but may not arbitrarily regulate visitors' clothing in any other way. Visiting privileges may be denied an attorney if he is caught smuggling in contraband.

Both accused and convicted inmates should have the right to consult with agents of the attorney or experts retained by him. When attorneys are not allowed to send law students, paraprofessionals, and defense investigators into prisons to interview inmates, the time which the attorney might spend in legal evaluation must be used in part for travel to the institution. This is an impermissible indirect infringement on the right to counsel.

13
Correspondence With Attorneys

The right to counsel includes the exchange of correspondence between a prisoner and his attorney. Letters from a prisoner to his lawyer must be mailed without examination or censorship. Incoming mail from the attorney to a prisoner may be examined solely for the detection of contraband but may not be read.

Historically, the courts allowed jail administrators great latitude in regulating the flow of correspondence in and out of prisons. Regulations usually took the form of inspecting and censoring all incoming and outgoing mail. The authorities claimed that this was necessary in order to maintain discipline and security within the institution. They were fearful that the mails would be used for transmitting contraband, to plan escapes, or to engage in other unlawful schemes.

In recent years, as the courts have begun to scrutinize these regulations closely, they have tended to restrict the use of censorship. The greatest degree of protection this far afforded to prisoners has been the right to free access to the courts, or more specifically, the right to correspond with the courts, counsel, and government officials.

Acknowledging that an inmate has the right to the assistance of counsel, it would be highly restrictive to confine an inmate's communication with his attorney to personal visits. If an inmate is not allowed to communicate freely with his attorney by mail, it would be extremely burdensome for the attorney to have to visit the jail every time he wanted to obtain or relay some information to the inmate.

Also, since many of the inmates in jail are in the process of preparing for their criminal trials, censorship of mail between the inmate and his counsel infringes on the guarantees of the Sixth Amendment. Most institutions allow confidential communication between an inmate and his attorney when they are in personal contact. The right to confidentiality in communication is not diminished because the mail is used.

Incoming mail from attorneys may be inspected for contraband but not read. This would indicate that mail may be opened by prison personnel. Though on its face this proscription against reading the mail may seem to be an adequate safeguard of confidentiality, the opportunity for abuse is enhanced once the envelope is opened. In spite of the prohibition, the temptation to read the letter is substantial. Furthermore, even if no mail was ever read, it would be important that there not be even the slightest appearance of impropriety. Some of the

suggested methods of inspection for outgoing mail can be employed here too, to avoid the need to open mail.

If such methods are not available, an alternative would be to open all incoming mail from attorneys in the presence of the inmate. If it is too burdensome to open each inmate's mail in his presence, then one inmate might be designated on a rotating basis to stand by prison personnel while they open the mail for all of the other inmates.

These rules should apply not only to attorneys who are actually representing the inmate but should apply equally to any correspondence to and from legal organizations (e.g., the American Bar Association) that the inmate has sought out for legal advice.

14
Prisoner's Right to Prepare Legal Papers

If a prisoner has no legal counsel he has a right to prepare and file legal papers with the court himself.

1. To this end, he is entitled to have access to law books and other legal materials together with reasonable amounts of writing materials, and to confer with other prisoners about his case.

2. Any documents so prepared must be transmitted to the courts by jail personnel, at public expense if necessary.

As noted previously, the majority of jail inmates are pretrial detainees. They usually have the assistance of an attorney, either retained or appointed. However, this does not extinguish the inmate's constitutional right of access to the courts or his concomitant right to file legal papers. Many inmates, including those awaiting trial, may want to petition the court for a new attorney or attack a previous conviction, contest a charge in another jurisdiction, or challenge the conditions of their confinement. Some may even wish to file suits relating to civil matters.

Jail officials should not place themselves in a position of deciding which claims are spurious or unmeritorious or refuse to mail a particular petition because it is not in the proper form. Such decisions belong to the courts. Court papers should not be read or censored, and every effort should be made to assure prompt forwarding of these papers. Delay may be harmful to the inmate who is attempting to meet filing deadlines.

Inmates are entitled to have access to legal materials. However, a problem arises as to the nature and extent of materials that should be available to inmates and when and where they can use them. The courts have held that inmates are entitled to a "significant" law library. Jail authorities should consult with law librarians as well as with the appropriate state law official to determine the contents of an appropriate law library for their state. No single prescription will suffice for all states. At a minimum, however, copies of state and federal criminal codes, state and federal procedure and pleading treatises, and recent state and federal decisions (or reporters containing such decisions) would be necessary.

The minimal book list may be sufficient only for superficial research; deeper research may require a supplemented collection. However, small institutions may have neither the space nor the funds to provide an extensive law library.

Furthermore, some jails may house such a small number of inmates that an extensive law library may cost more to implement and operate than the facility itself.

To overcome some of the problems in very small institutions and still guarantee inmates' access to legal materials, a plan could be developed for securing legal materials on an as-needed basis. Such a plan could involve transporting inmates, when necessary, to an existing law library, county bar association, or law school in the vicinity of the facility in which they are incarcerated. Free or inexpensive photocopying should be permitted so that the inmate can use appropriate materials after he returns to the jail. Smaller institutions could also supplement their skeleton libraries by borrowing from master libraries with full collections and facilities for delivery of materials. Mobile library facilities have also been suggested.

Ample hours for library use should be provided. As a general rule, the law library should be open during hours that will not conflict with work assignments on a regular basis. For example, the library might be open in the evenings and on weekends.

Inmates should be allowed to have a reasonable amount of time to work on documents. What is reasonable depends upon the individual circumstances. Inmates who are required to meet deadlines in connection with pending litigation should generally be given more latitude than those just initiating suits and not required to file within a certain time period. Inmates who are in segregation should be given the same opportunity to work on their legal papers and have access to legal reference materials as those inmates in the general population.

Since it is advantageous to submit court papers in typewritten form, every effort should be made to allow inmates access to typewriters, either by allowing each inmate to type papers individually or through inmate clerks to whom handwritten documents can be submitted by the individual inmates. If there is going to be a delay in having the documents typewritten, the inmate should be so advised, so that he may transmit handwritten copies to the court.

In the absence of suitable alternatives inmates should be permitted, if they so request, to seek the assistance of other inmates in the preparation of their legal papers. These other inmates, commonly known as "jailhouse lawyers," should not receive money or other special favors for their assistance. Furthermore, it is appropriate for jail officials to place reasonable restraints upon inmates, such as limitations on the time and place for assistance. Although an assisting inmate may be prohibited from visiting an inmate in isolation, he should not be prevented from working on legal materails for the isolated inmate.

No inmate should be disciplined or punished for exercising his right to file papers in court, no matter how false or derogatory his statements regarding the jail operation may be. Only if the courts inform the jail officials that the legal papers include threatening or obscene language may the jail authorities take any action.

15
Access to the Courts

An inmate has a right to unrestricted and confidential access to the courts and to the executive agencies of government. The same rules apply to this kind of correspondence as in the case of a prisoner's attorney.

As indicated earlier, the inmate's constitutional right of access to the courts is a fundamental freedom which includes among other things the right to correspond directly with them. Since many inmates no longer have the services of an attorney after conviction, much of the court-directed mail is from inmates seeking postconviction relief. Because a majority of all jail inmates are pretrial detainees, the volume of court-directed mail from jails will be considerably less than from prisons. However, the mere fact that most jail inmates, as pretrial detainees, have the services of an attorney does not diminish the right of unrestricted and confidential communication with the courts. Along with postconviction matters, inmates may be pursuing remedies in connection with civil legal problems (e.g., divorce proceedings or credit problems) or they may be asserting against some government authority rights protected by constitutional, statutory, or common law.

Though it is clear that total access to the courts cannot be denied to an inmate by refusing to mail his letters or by delaying them, some jail regulations still improperly permit review and censorship of the contents of an inmate's correspondence with the courts. The fact that prisoners may exaggerate jail conditions and make false allegations against jail officials does not justify review and censorship of court-directed mail, since it is the job of the court—not the jail officials—to decide which issues are meritorious and which are not.

Furthermore, it is not the job of the jail officials to review the contents of court-directed mail so as to determine if pleadings and the like are properly formulated. That determination is also a proper function of the court.

Although there may be some justification for inspecting incoming mail from attorneys (see discussion under Right 13), the likelihood that contraband and/or plans for illegal activity would pass through mail to and from court is remote. Even if an inmate should attempt to use the courts as a letter drop for unauthorized or objectionable correspondence, the court can be expected to report the matter promptly. Therefore, there appears to be little reason to inspect any incoming or outgoing court mail unless there is indication the mail is not actually from the court.

While a jail administrator is always concerned about internal security, the risk of a breach of that security in the context of court-directed mail is so slight

and the interest of the inmate in unfettered communication so great that the elimination of inspection would avoid unnecessary delay in delivery.

Courts are not the only agency with which an inmate might wish to correspond to seek relief. Public officials in the executive and legislative branches of government and civil rights organizations might be the targets of pleas for assistance by an inmate. There is no perceivable distinction between mail to the courts and mail to public officials that warrants differences in the handling of the mail.

16
Grievance Procedures

Prisoners in jail are entitled to report grievances to any proper official within the state. The sheriff or jail administrator should have a method for impartial investigation and resolution of any complaints.

The right to petition for a redress of grievances emanates from the First Amendment to the Constitution and is not forfeited by confinement. As indicated under Right 15, the jail staff may not interfere with the exercise of this right by stopping mail to public officials.

It is in the sheriff's interest, however, to develop an *internal* procedure for receiving and responding to grievances concerning the jail operation. The foundation principles of a good grievance procedure may be briefly listed:

1. Anyone housed in the jail should be authorized to report a grievance.
2. No one should delay or divert a grievance from promptly reaching the person designated to receive grievances.
3. Every grievance not frivolous on its face should be promptly investigated, and a written report should be prepared. Both the complainant and the sheriff or jail administrator would receive this report.
4. There should be a specific response by the sheriff or jail administrator to each such report—acceptance and implementation, denial, or modification —within a short time. It goes without saying that the inmate reporting the grievance should not in any way be subjected to adverse action as a result of doing so.

The means being used to implement these principles are now expanding. To the traditional internal "mail box" for complaints are now being added ombudsman programs, community arbitrators, and other techniques. Each institution is encouraged to employ the approach best adapted to local conditions.

17
Crimes Committed in Jail

If a crime is committed in the jail, any prisoner who is a suspect has the same constitutional rights in reference thereto as though the crime were committed elsewhere and he were not confined.

When a crime is committed in the jail, the sheriff should seek the advice of legal counsel as to whether to punish administratively or to proceed as in regular criminal cases. Initially, the primary concern of jail staff should be to avoid taking any action which would subsequently make it difficult or impossible to prosecute the inmate for the crime.

There are several possible ways in which this can be handled. The best solution may simply be to wait until after the criminal proceeding has ended before taking any disciplinary action and thus avoid prejudicing the inmate's rights in any way. In many cases the impact of such delay on the general state of jail discipline will be minimal, since the district attorney may decline prosecution after considering the matter.

During the time the case is being held in abeyance, if it is believed that the inmate presents a threat to himself or other inmates or is an escape risk, a hearing should be held on this question before he is given any increased custody status. At the hearing, the inmate should be given an opportunity to introduce evidence on these questions as well as to examine any witnesses against him. This type of hearing should not be concerned in any way with the charged offense, because it is for classification rather than discipline. If the board decides that the prisoner must be given a higher custody status, this decision should be periodically reviewed.

A second possible solution would be to hold a disciplinary hearing but grant the inmate "use immunity" if this is legally possible under local law to permit him to testify in his own behalf. A grant of use immunity prohibits anything the inmate may say at the disciplinary hearing from being introduced in the criminal proceeding. The problem with this solution is that use immunity frequently can be granted only by the court. If the jurisdiction in which the jail is located recognizes such immunity, a decision to grant it should be considered with the assistance of the district attorney.

A third solution is to allow the inmate to be represented by an attorney at a disciplinary hearing conducted with full due process rights. This would allow the prisoner to protect his right against self-incrimination without sacrificing his defense to the disciplinary charge. The attorney will also be in a position to

introduce any mitigating evidence that may exist.

Whichever solution is used, it is important to remember that the prisoner who is accused of a crime while in jail forfeits none of his constitutional rights. Any person suspected of committing a criminal offense is entitled to a number of protections set out in the Fifth and Sixth Amendments. They include: a presumption of innocence, the right to the assistance of counsel, a speedy trial by a fair and impartial jury, and the right not to have to testify against oneself.

Since anything the prisoner says can be used against him at a criminal trial, he cannot be forced to say anything at a disciplinary hearing. Indeed he must be warned that anything he says can and will be used against him. However, if he fails to defend himself, the prisoner faces almost certain punishment from the disciplinary board. This may include a lengthening of his sentence through the loss of good time. For this reason, a number of courts have stated that some system must be devised to protect the prisoner's rights at both the disciplinary hearing and the criminal proceeding.

He must be given a clear warning of these rights, the same warning as that required by the Supreme Court in *Miranda v. Arizona*. The proper time to give this warning is before any interrogation of the prisoner about the incident. He must be told:

1. You have a right to remain silent.
2. Anything you say can and will be used against you in a court of law (or a disciplinary proceeding).
3. You have a right to the assistance of an attorney.
4. If you are unable to afford an attorney, one will be provided for you.

18
Religious Freedom

Prisoners have the right to freedom of religious affiliation and voluntary religious worship, providing that exercise of these rights does not directly interfere with the security and discipline of the jail.

All rules and regulations in this regard must be applied to all religions without distinction or discrimination.

Only in the most unusual circumstances and on advice of counsel should these rights be curtailed.

Freedom of religion is one of the "preferred" First Amendment rights which have been given most protection by the courts. The strict requirements of the First Amendment have rarely permitted any limitation on the religious rights of citizens or of inmates of institutions. The right to hold a chosen religious belief can never be curtailed for any reason in any setting. The right of religious affiliation, in the sense of becoming a member of a religion, also has absolute protection. However, the right of affiliation, in the sense of association with fellow members of a religion, and the nature of actual religious practices and forms of worship may be limited in certain unusual circumstances.

A sheriff has the same burden that a state has of showing legitimate and overriding interests which are strong enough to justify limitations on religious affiliation and worship. Courts do recognize security and discipline as legitimate and sometimes overriding interests in a jail setting. If a sheriff can show that a "clear and present danger" to security and discipline would result if an inmate were allowed to worship in accordance with his religious principles, then the threatening practices can be curtailed.

However, since all "reasonable" efforts must be made to accommodate varying religious practices, a compromise or alternative should be sought to avoid a complete denial of rights. For instance, prisoners may wish to wear emblems or symbols appropriate to their individual faiths. Such emblems are generally forbidden in the jail because they have sharp metal edges, but the sheriff could provide for the wearing of cloth symbols and emblems. If the sheriff determines that the presence of a particular inmate at worship services would create burdensome security or discipline problems, the sheriff should arrange for the chaplain to visit the prisoner in his cell. In like manner, the jail cannot deny a person his religion because the belief is not based on the concept of a Supreme Being or its equivalent, or the belief is unpopular or controversial. Generally, if there is a loose and informal association of persons who share common ethical, moral, and intellectual views and if those views are

deeply and sincerely felt by the individual, then he must be allowed the rights of affiliation and worship required by the First Amendment.

Every religious group has a recognized right to assemble, and those requesting assembly should be given a place for it. The size of the group may be considered in determining where it might meet. For example, a group of 20 may be denied the use of a chapel which holds 200 if a group of 150 requests the same chapel. An inmate may attend the services of a group, even though he is not affiliated with the group.

Inmates have the right to have a minister of their faith visit, counsel, and hold services with them. A minister's visit need not always be totally religious in nature, for chaplains commonly serve a wide range of social work and educational functions. If ministers of a certain faith are being paid for their services in the jail, then ministers of other religions must be paid also, to avoid charges that one group is being preferred over another.

Some jails have a rule that former offenders may not visit the jail. Under the "clear and present danger" test, however, a sheriff must be prepared to show why a particular minister who has a criminal record would pose a substantial and immediate threat to jail security. More than speculation based on remote possibilities is required; potential disruption cannot be assumed.

The freedoms of religious affiliation and voluntary worship imply, of course, their corollary rights—freedom not to affiliate and freedom to abstain from any worship. A sheriff may not require prisoners to attend religious services while they are in jail. Neither can regularity of attendance at religious services (or lack of attendance) be considered as a basis for the bestowal of any right or privilege within the jail.

19
Visitation and Mail

Prisoners should be allowed to visit in private and to correspond with family members, friends, religious advisors, prospective employers, and the news media in keeping with a reasonable jail schedule. Incoming mail may be opened and searched for contraband, but correspondence should not be read unless there is a valid reason to suspect a security violation. Outgoing mail should be left sealed and untouched.

This right supplements those dealing with correspondence with the courts and with attorneys. In relates to one of the more depressing aspects of institutional life—isolation. Just as free and unrestricted access to the courts is important to an inmate if he is to protect his rights, communication with family, friends, and others is important if the inmate is to retain his ties to the community and his knowledge of what the free society is like. The following comments are made to provide guidance as to the right.

1. VISITATION

There should be a visiting room in each institution that is large and comfortable enough so that several inmates and their visitors can meet simultaneously and still retain some privacy. Mechanical barriers, such as glass partitions or bars, between the inmate and visitor should be avoided, since this tends to emphasize separation rather than to help retain bonds between the inmate and the outside world. A correctional officer can be in the visiting room during the visiting hours in order to maintain order and security. However, his job should not be to monitor conversations between inmates and visitors.

It is recommended that each inmate be allowed to submit a list of individuals whom he would like to have as visitors. The list may be amended or changed at any time. The mere fact that an individual is a former offender should not in and of itself keep him from visiting an inmate.

Visiting hours may be varied to meet jail schedules but should be flexible enough to permit visitors to come on days when they are not employed. There should be no limitation on the number of visits made by a particular individual, and each visitor should be allowed to stay at least one hour and possibly longer if the facilities permit. However, the regulations relating to visitation should be flexible enough to permit exceptions to the rules, such as when a visitor travels a substantial distance. It is reasonable to require each visitor to register his name, address, and relation to the inmate upon entry. The visitor could also be searched, if necessary. Dress regulations may be instituted to prohibit visitors from wearing clothers similar to those of the inmates.

Inmate interviews with members of the press are often appropriate. With pretrial detainees, jail officials will have to consider promulgating policies which diminish the chance that pretrial publicity will interfere with the accused's right to a fair trial. Fear of critical publicity about the jail, however, does not justify prohibiting press-inmate contacts.

2. MAIL

The comments made in regard to mail to the courts and to attorneys are applicable here. It is emphasized that all *outgoing* letters should be mailed without inspection. The likelihood that contraband will be smuggled out of the jail is too small to justify any other procedure.

Inmates should not be prohibited from sending letters to any person, nor should there be any limit to the number of letters that an inmate may wish to mail. A liberal allowance of free postage and stationery is recommended for those inmates who do not have sufficient funds. Inmates may also be advised that their mail is subject to the same rules applicable to other persons using the mails.

Every effort should be made to minimize the number of *incoming* letters that are subject to being opened. Although, as noted above, all incoming envelopes may be opened but not *read*, external inspection should be employed, where possible, to avoid the necessity of opening mail. When such external inspection arouses real suspicion regarding the contents of the correspondence, it may be opened. Good practice would be to do this in the inmate's presence. If contraband is discovered in mail from outside, the inmate should be notified in writing. No disciplinary action should be taken against him, however, unless it can be shown that he had knowledge that the contraband was going to be transmitted.

Inmates may also be allowed to communicate with the news media, which include any printed or electronic means of communication, such as newspapers, magazines, books, radio and television.

20
Participation in Programs

Prisoners should have the opportunity to participate in education, vocational training, and employment as available, and have reasonable access to a wide range of reading material.

The following comments are suggestions as to the implementation of this right:

It is generally agreed that confinement as punishment for criminal behavior is an appropriate sanction for some offenders. If incarceration is to be more than punitive, however, an effort should be made to help inmates improve their condition so that future misconduct may be avoided.

Some inmates will be "sick" in a medical or psychological sense. It is doubtful whether the jail holding such persons for only short periods and faced with the usual resource limitations, can be of much, if any, help to these individuals.

More promising, however, are the prospects for working with the larger number of persons who have few or no job skills and little education. Although an illiterate and unskilled person can hardly become a master plumber while doing 60 days, he can be motivated toward such a goal and put on course toward it. Failure to take affirmative steps in this regard virtually assures the jail of a revolving-door clientele—a costly and unnecessary phenomenon.

Traditionally, education is only one part of a larger program in the jail and generally must compete for the individual's time during the standard working hours. The status and priority accorded to educational programs in the institution are not commensurate with today's demands and expectations. Staffing and organization of education departments lack diversity. Teachers are employed in the general categories of elementary or high school classes. Subjects taught are highly traditional and uninspiring. Libraries generally are open only during regular school hours and closed to students in the late afternoon and evenings and on weekends and holidays.

A major educational effort requires attention to costs, which will be higher than in the regular educational system. Teachers should be required to have state certification, and in addition they will need special educational preparation for dealing with the particular needs of offenders. The curriculum should not be restricted to traditional academic subjects; particular stress should be placed on consumer and family life and other social education courses. A library equipped with materials appealing to a broad range of interests and

educational levels can effectively supplement formal educational programs. Such a library is also an important component of the jail's recreation program.

In today's technological society, the occupational structure is changing rapidly. Vocational programs need to expose offenders to a number of skills. Vocational training should be given in short, intensive modules. It should be geared to the individual requirements of each offender, rather than to such institutional considerations as filling available spaces in particular programs. The training programs themselves should be related to the actual needs of offenders and of the job market in the communities to which they will return.

A job placement service should help inmates find jobs in the community related to the training they have received. A furlough or work-release program should be established to place inmates in outside employment at the earliest possible time.

Credit for the completion of educational and vocational programs will help offenders compete for jobs on release and add credibility to their training.

Cooperative programs involving community resources should be developed, as well as follow-through after release. Community residents should serve on advisory boards for vocational training, assist in post-incarceration employment placement, and provide talented offenders and ex-offenders with needed educational opportunities.

Work in the jail is both necessary and desirable. Unfortunately, the element of necessity is too often prevalent, and the desirable aspects are submerged. Movement toward payment of prevailing wages offers a way to bring these competing elements more nearly into balance. Under any system, of course, care must be taken not to require inmates to do work they cannot perform for physicial or other reasons. In order to maintain discipline and morale, work assignments should be equitably distributed and everyone made to work in his turn. (This requirement, of course, does *not* apply to pretrial detainees.)

Administrators frequently give consideration to tapping existing community services rather than duplicating them. Such "purchase of service" programs appear to have both qualitative and fiscal advantages which dictate evaluation of this approach.

21
Transfer

If an inmate is to be moved out of the jurisdiction under whose authority he is being held, he is entitled to reasonable notice and the opportunity to secure an attorney unless an emergency exists.

Virtually every sheriff will have to deal at one time or another with the transfer of a prisoner to another facility. Until recently, the sheriff could transfer any inmate without consulting the prisoner or even telling him why he was being transferred. In the last several years, the courts have ruled that when a prisoner is involuntarily transferred to a facility in another jurisdiction, he is first entitled to a hearing and certain other due process rights. Although these cases have largely dealt with prison inmates and interstate transfers, it is important for sheriffs to understand both the reasoning behind these new decisions and their effects.

The due process to which an inmate is entitled prior to his transfer depends entirely upon the degree of interest he has in remaining at the jail in comparison to the sheriff's interest in transferring him. If the sheriff has a good reason for the transfer, such as alleviating overcrowding, and the inmate has no objection to his transfer, no hearing is required. On the other hand, if there is a dispute over whether the transfer is justified or needed, the prisoner must be given a number of due process rights.

There are a number of good reasons a prisoner may wish to remain where he is. Perhaps the most important of these is that a pretrial detainee must be near the place of his alleged offense in order to adequately assist in the preparation of his defense. If he is transferred, it becomes very difficult for him to consult with his attorney, contact possible witnesses, and plan his rebuttal of the charges against him.

All prisoners can assert other reasons. One can show, for example, that the transfer takes him away from his family and friends, so that it will be more difficult for them to visit him. The transfer also make it necessary for him to adjust to an entirely different environment with new people and new regulations. The sheriff at the new facility may deem the transfer to be sufficient reason to limit the prisoner's freedom or impose tighter restrictions upon him. If it can be concluded that the prisoner will suffer "grievous loss" because of the transfer, due process must be followed before the move.

Realizing this, courts have ruled that the prisoner is entitled to a hearing prior to his transfer. Three to seven days before the hearing is to be held, he

should be notified of the proposed transfer. If there are rule violations behind the proposed change, he should be told the charges and thus given time to prepare a defense. The person who made the charges against the prisoner should not decide on the transfer or be allowed to sit on the hearing board. However, the board may include other jail personnel or persons from the outside or a combination of staff and outsiders.

At the hearing, the inmate should be given an opportunity to refute the charges against him and present reasons why he should not be transferred. He should have a chance to offer testimony himself as well as calling witnesses in his own behalf. He should also be allowed to hear the evidence against him and to cross-examine adverse witnesses. The only exception to the right to cross-examine is when the body hearing the matter believes this would endanger the person giving adverse evidence. The inmate should be permitted to secure an attorney or lay advocate to aid him in presenting his case.

The board should make its decision based solely upon the evidence presented before it at the hearing. Once the decision has been reached, this decision should be written, along with any findings of facts. A copy should be given to the prisoner. A copy should also be kept by the sheriff in case he is ever called upon to justify the board's decision.

In the case of an emergency, such as a jail riot, the problem of transfers can be dealt with differently. If the sheriff believes that it is necessary to transfer someone in order to stop or prevent an imminent riot, he may do so without giving the person a hearing. However, once the emergency has ended, the prisoner must be returned to the jail from which he was transferred. Then, in calmer times, the type of hearing discussed above can be conducted if the transfer is still deemed appropriate.

Depending upon local law, the sheriff may have to comply with other requirements, such as obtaining court permission for the transfer. This would most frequently be found in the case of pre-trial detainee. Such statutory or historical procedures are supplementary to, and not a substitute for, the constitutional requirements discussed above.

The Committees

This handbook on Rights of Inmates is the final result of a series of conferences with members of the Legal Rights Sub-Committee of the Detention/ Corrections Committee of the NATIONAL SHERIFFS' ASSOCIATION.

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The Constitutional Provisions Referred To In The Text Are These: The Bill of Rights And The Fourteenth Amendment

Article 1

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Article 2

A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

Article 3

No Soldier shall, in time of peace be quartered in any house, without the consent of the Owner, nor in time of war, but in a manner to be prescribed by law.

Article 4

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Article 5

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Article 6

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

Article 7

In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

Article 8

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Article 9

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

Article 10

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States, or to the people.

Amendment 14

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

END