13 LEGAL ISSUES IN CORRECTIONS AND THE DEATH PENALTY

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Test Your Knowledge

Test your current knowledge of legal issues pertaining to the rights of people under correctional supervision by answering the following questions true or false. Check your answers on page 389 after reading the chapter.

1. Prison inmates were not afforded any legal protections until the mid-20th century.
2. The majority of lawsuits filed by inmates today have to do with claims of innocence.
3. Prison inmates have no Fourth Amendment protections against unreasonable search and seizure.
4. Prisoners are the only group of

5. Most Americans support the death penalty.
6. A white murderer is proportionately more likely than a Black or Hispanic murderer to be sentenced to death and to be executed.
7. The death penalty is cheaper than life in prison without the possibility of parole.
8. In the United States, it is permissible to execute a person with a history of mental illness, but not one with a mental disability (i.e., low IQ).

Back to Chapter 13 Reading

Learning Objectives

Upon completion of this chapter, the reader should be able to:

13.1 Discuss the evolution of law within the field of corrections.

13.2 Identify issues and cases involving

PRISON WITHOUT LAW

Prisons are not nice places; they were never meant to be. This does not mean that society is ever justified in treating prisoners in less than humane ways. This message never reached at least two state prison farms in Arkansas where inmates' labor was used to produce crops and dairy products, bringing in average yearly profits of $1.4 million. In 1967, a report was released detailing horrifying conditions at the Tucker and Cummins state penal farms, including widespread sexual assault, floggings, and extortion by the armed prisoners placed in positions of power by prison authorities to save on the expense of hiring correctional officers. A federal judge called the entire Arkansas prison system a "dark and evil world." In addition to such medieval tortures as having one's testicles crushed, a more "modern" method of torture was the Tucker telephone. This device involved applying an electric current to the genitals by cranking an old-fashioned telephone. Depending on the offense, an inmate would receive a local or "long-distance" call.

Worse yet, a number of bodies of former inmates who had been listed as "successful escapees" were dug from unmarked graves on the orders of the new warden, Tom Murton. The scandal eventually became too much for the state governor as more bodies were exhumed, and Murton was fired and told that he had 24 hours to leave the state or be arrested for grave robbing. Who will protect inmates from exploitation, torture, and murder if the executive branch of government will not? Only an independent body relatively free of concerns about the personal consequences of doing the right thing can be trusted to safeguard prisoners rights. As you read this chapter you may become annoyed at what you might consider legal mollycoddling of criminals, but think about how bad the prison system would be without some sort of judicial oversight, which is precisely the way it was in the not-so-distant past.

INTRODUCTION: THE HISTORY OF LAW IN CORRECTIONS

LO 13.1 Discuss the evolution of law within the field of corrections.

Winston Churchill once said that a civilization is judged by the way it treated its prisoners (Morris, 2002). We do not treat them very well and never have, but many people see prisoners' getting better treatment than they deserve, as summed up in the line "If you can't do the time, don't do the crime." Criminals are perhaps the most despised group of people in society because they are viewed as evil misfits who prey on decent people, so why worry about what happens to them while they pay their debt to society? But as we incarcerate more and more people, how these people are treated while incarcerated becomes more pressing. The only system capable of monitoring the treatment of convicted criminals, other than the criminal justice system itself, is the court system. The courts have changed their attitudes toward the treatment of prisoners over the history of the United States, ranging from complete indifference to attempting to micromanage a state's prison system. In this chapter, we review how inmates in prisons and jails were legally viewed in the past and today.

The Rule of Law

When we discussed Packer's (1964/1997) crime control/due process model of criminal justice in Chapter 1, we were essentially asking, "How do we best achieve justice for all concerned—for society and those who offend against it?" The only way we can be reasonably assured that justice resides within a legal system is to determine the extent to which it adheres to the **rule of law**. The idea of the rule of law involves the notion that every member of society, including lawmakers, presidents, and prime ministers, is subject to the law. The rule of law has been called "the most important legal principle in the world" (Goff, 1997, p. 760), and according to Reichel (2005) it contains three irreducible elements:

> **Rule of law**: The principle that laws, not people, govern and that no one is above the law.

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1. A nation must recognize the supremacy of certain fundamental values and principles.
2. These values and principles must be committed to writing.
3. A system of procedures to hold the government to these principles and values must be in place.

All organized societies recognize a set of fundamental values they hold supreme, whether the ultimate principles are secular or religious. Likewise, all literate societies put these values and principles in writing in their holy books or national constitutions. However, the third element is more problematic because it shows whether a country honors its fundamental values in practice as well as in theory. The law is just words on paper if it is not respected by human actors. If the law is to be consistent with justice, it can be so only if the procedures followed by its agents are perceived as just by everyone. The procedures designed to hold the government to its written principles are articulated by the concept of due process.

When we speak about something that is due us, When we speak about something that is due us, we are referring to something to which we are rightly entitled. Due process of law is owed to all persons whenever they are threatened with the loss of life, liberty, or property at the hands of the state. It is essentially a set of instructions informing agents of the state how they must proceed in their investigation, arrest, questioning, prosecution, and punishment of individuals who are suspected of committing crimes. The individuals charged with monitoring the behavior of agents of the state with respect to their adherence to due process principles are the judiciary. If the judiciary is corrupt, lax, or the puppets of politicians or public opinion, then the rule of law is likely to be ignored, particularly as it pertains to prisoners.

The Hands-Off Period: 1866–1963

When discussing prisoners' rights, legal scholars have defined three different historical periods: the hands-off, prisoners' rights, and deference periods. Throughout much of American history the attitude of the courts toward prisoners has the attitude of the courts toward prisoners has been called the **hands-off doctrine**. This doctrine articulated the reluctance of the judiciary to interfere with the management and administration of prisons—to keep their "hands off." The doctrine rested primarily on the status of prisoners who suffered a kind of legal and civil death upon conviction. Most states had **civil death statutes**, which meant that those convicted of crimes lost all citizenship rights, such as the right to vote, to hold public office, and —in some jurisdictions—to marry. The philosophical justification for civil death statutes, ironically, came from the text of the Thirteenth Amendment to the U.S. Constitution, which abolished slavery in the United States. The Thirteenth Amendment reads,

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Hands-off doctrine: An early American court-articulated belief that the judiciary should not interfere with the management and administration of prisons.

Civil death statutes: Statutes in

> Neither slavery nor involuntary servitude, except as a punishment for a crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

Photo 13.1 During the "hands-off" period, inmates often resided in dilapidated and overcrowded facilities where they might be overworked, underfed, and mistreated by the state and correctional officials.

Public domain

Slavery was thus abolished "except as a punishment for crime." This enabled prison officials to lease prisoners to local businesses for profit and to use them as unpaid labor to maintain the financial self-sufficiency of prisons—in short, to treat them like property (Call, 2011).

In affirming the ruling of a lower court in *Ruffin v. Commonwealth* (1871), the Virginia Supreme Court made plain the slavelike status of convicted offenders:

> For the time being, during his term of service in the penitentiary, he is in a state of penal servitude to the State. He has, as a consequence of his crime, not only forfeited his liberty, but all his personal rights except those which the law in its humanity accords to him. He is for the time being the slave of the State. He is *civiliter mortuus* [civilly dead]; and his estate, if he has any, is administered like that of a dead man.

Ruffin was a state case and thus not binding on other states, but the case was consistent with the earlier U.S. Supreme Court case *Pervear v. Massachusetts* (1866). *Pervear* was the foundational case that first clearly enunciated the lack of concern for prisoners' rights contained in the hands-off doctrine. Pervear had been sentenced to 3 months' hard labor and a large fine for failing to obtain a license for his liquor store, and he challenged his sentence on the basis of the "cruel and unusual" clause of the

Eighth Amendment. The Supreme Court made plain the slavelike status of prisoners, ruling that they did not even enjoy the protections of the Eighth Amendment. Convicts thus found themselves at the mercy of prison officials and fellow prisoners without any constitutional protection provided by judicial oversight.

The hands-off doctrine also prevailed because the courts viewed correctional agencies as part of the executive branch of government and did not wish to violate the Constitution's separation of powers doctrine. Prison officials were considered capable of administering to the needs of prisoners in a humane way without having to deal with the intrusion of another branch of government. Besides, if prisoners have been stripped of any rights under civil death statutes, there is nothing for the courts to monitor and protect.

The Prisoners' Rights Period: 1964–1978

The convict-as-slave approach slowly gave way to the idea that convicted felons retained a business of the executive and legislative branches of state government to honor them. States' rights and fear of an overbearing federal government were more deeply felt concerns in the past than they are today, and the federal courts were still reluctant to move too far in the direction of limiting states' rights or further fueling citizens' distrust of the federal government. We should recognize that the Bill of Rights was intended to apply only to actions of the federal government. It was not until the 20th century that federal courts began to apply the rights in the Bill of Rights to state actions in a process known as incorporation (Walsh & Hemmens, 2014). Incorporation essentially means that due process rights, which formerly needed to be respected only by the federal government, now needed to be respected by the state governments also.

As part of a growing trend toward an overall greater respect for individual rights during the mid-20th century, the courts began to enter into the area of prisoners' rights. The first significant case leading to the end of the hands-off doctrine was *Ex parte Hull* (1941). This case dealt with the offenders:

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The major issue in prisoner litigation has been the conditions of confinement. The technical term for a challenge to the legality of confinement is a writ of habeas corpus. **Habeas corpus** is a Latin term that literally means "you have the body" and is basically a court order requiring that an arrested person be brought before it to determine the legality of their detention. Habeas corpus is an important concept in common law that precedes even the Magna Carta of 1215. It has been called the "Great Writ" and was formally codified into English common law by the Habeas Corpus Act of 1679. Indicative of the respect in

Corpus Act of 1679. Indicative of the respect in which habeas corpus was held by the Founding Fathers of the United States is that it is one of only three individual rights mentioned in the Constitution. The other two are the prohibition of bills of attainder (imposing punishment without trial) and the prohibition of ex post facto laws (legislation making some acts criminal after the fact). The other individual rights that Americans enjoy were formalized in the first 10 amendments to the Constitution (the **Bill of Rights**) almost as an afterthought. A writ of habeas corpus is not a direct appeal of a conviction but rather an indirect appeal regarding the legality of a person's confinement. In *Coffin v. Reichard* (1944), the Sixth Circuit Court of Appeals widened habeas corpus hearings to include conditions of confinement, but this had little impact for 20 years.

Habeas corpus: Latin term meaning "you have the body." It is a court order requiring that an arrested person be brought before it to determine the legality of detention.

Bill of Rights: The first 10 amendments to the U.S. Constitution.

Two cases signaled the end of the hands-off period: *Jones v. Cunningham* (1963) and *Cooper v. Pate* (1964). In *Jones*, the Supreme Court went further than it did in *Hull* and ruled that prisoners could use a writ of habeas corpus to challenge the conditions of their confinement as well as the legality of their confinement. This went way beyond the original meaning of habeas corpus, which was meant only to address the preconviction issue of the legality of a petitioner's detainment. In *Cooper*, the Court ruled that state inmates could sue state officials in federal courts under the Civil Rights Act of 1871, which was initially enacted to protect southern Black people from state officials. This act is now codified and known as 42 USC § 1983, or simply as **Section 1983 suits**, and any deprivation-of-rights grievance filed under it is called a **civil rights claim**. The relevant part of the act reads as follows:

Section 1983 suits: A mechanism for state prison inmates to sue state officials in federal court regarding their confinement and their conditions of confinement.

Civil rights claim: A "Section 1983" claim that a person has been deprived of some legally granted right.

> Every person who under color of any statute, ordinance, regulation, custom, or usage of any state or territory, subjects or causes to be subject, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law.

What had been a trickle of habeas petitions before *Cooper* quickly became a flood that threatened to drown the federal courts with grievances. The most serious petition led to a federal appeals judge declaring the entire prison system of Arkansas unconstitutional and a "dark and evil world" when he placed it under federal supervision (*Holt v. Sarver*, 1969). As we saw in the opening vignette, inmates were routinely subjected to brutal conditions in Arkansas prisons. This case gave birth to what has come to be known as a "conditions of confinement lawsuit." From then on, the federal courts became heavily involved in the monitoring the operation of state prison systems. The vast majority of habeas corpus grievances filed today are about the conditions of confinement because inmates' convictions are the legal basis for their confinement.

The Deference Period: 1997 to Present

After a short time in which prisoners' rights were granted and extended, there began an era called the **deference period**. This period is a partial return to the hands-off period and refers to the courts' willingness to defer to the expertise and needs of prison authorities. The courts have come to the conclusion that it is necessary to place restrictions on prisoners' rights that do not apply to nonoffenders because of the need to balance the rights of offenders with the needs of correctional authorities for safety and security in prisons and jails. The general rule is that prisoners' rights must be secondary to the maintenance of institutional order and security and safety of inmates and staff. The stance of the Supreme Court on this matter has not changed since it was first enunciated in *Bell v. Wolfish* (1979), the case widely considered to be the one that signaled the onset of the deference period:

Deference period: The period of time when there was a partial return to the hands-off approach. It refers to the courts' willingness to defer to the expertise and needs of the authorities.

Simply because prison inmates retain certain constitutional rights does not mean that these rights are not subject to restrictions and limitations. There must be a "mutual accommodation between institutional needs and objectives and the provisions of the Constitution that are of general application." Maintaining institutional security and preserving internal order and discipline are essential goals that may require limitation or retraction of the retained constitutional rights of both convicted prisoners and pretrial detainees.

APPLICATION OF THE AMENDMENTS TO THE CONSTITUTION TO CONVICTED FELONS

LO 13.2 Identify issues and cases involving the First, Fourth, Eighth, and Fourteenth Amendments.

We begin by looking at certain fundamental rights guaranteed by the First, Fourth, Eighth and Fourteenth Amendments to the Constitution and how they apply to convicted felons.

First Amendment

The First Amendment to the Constitution reads,

> 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.

The **First Amendment** guarantees freedom of religion, speech, press, and assembly. It goes without saying that in a prison setting, these freedoms cannot extend to anything that jeopardizes prison safety or security. *Cooper v. Pate* (1964) was essentially a First Amendment issue because Thomas Cooper, a Black Muslim, alleged that he was denied certain religious publications on the basis of his religion. Prison authorities claimed that Black Muslim literature was dangerous and jeopardized the safety and security of the prison because it preached violent revolution and sought to recruit new members.

The Supreme Court acknowledged that such literature may have an incendiary effect but ruled that Cooper's right to free exercise of his religion trumped what might result in security problems. Free access to written materials does not include such things as a manufacturer's guide to prison security locks or pornographic materials.

Photo 13.2 Inmates retain some First Amendment rights, including the right to practice their religious beliefs, if doing so does not unduly interfere with prison security.

Brian Vander Brug/*Los Angeles Times*/Getty Images

First Amendment: Guarantees freedom of religion, speech, press, and assembly.

Religious freedom cannot extend to demanding alcohol or exotic foods to satisfy real or invented religious requirements. But the law is more an ideological exercise than a science. As if to prove our point, two federal circuit courts came to opposite conclusions in the same year (2008) regarding Muslim inmates' right to a halal diet (a diet that prohibits eating pork and shellfish and in which animals must be slaughtered in a certain way). The Eighth Circuit Court ruled that denial of a halal diet did not place an undue burden on the inmate, but the Ninth Circuit Court ruled in a different case that the refusal to supply a Muslim inmate with a halal diet impinged on his free exercise of religion rights (Robertson, 2010).

Restrictions on inmates' rights to free speech can exceed those necessary to ensure safety and security. In *Smith v. Mosley* (2008), the plaintiff made a statement in a grievance that prison authorities saw as insubordinate and false, for which he received disciplinary sanctions. LeRoy Smith sought relief in the federal court, claiming that he had been punished for exercising his right to free speech. The court disagreed, ruling that although filing a grievance is considered protected speech, the statements made within it are not, and therefore the imposition of sanctions was constitutionally permissible. Freedom of speech or expression can also be limited on speech or expression can also be limited on moral or ethical grounds. For instance, inmates can write and publish their thoughts or sell personal memorabilia, but "notoriety-for-profit" statutes enacted by the federal government and most states forbid inmates from profiting monetarily from those activities (Walsh & Hemmens, 2014).

The right of assembly allows attendance at religious services and visitation from family and friends, but it obviously cannot be construed as allowing inmates to assemble at a tattoo conference outside the prison walls. Federal courts have also ruled that although Black Muslim groups had the right to assemble for worship, their right to hold religious services could be denied if prison administrators considered such services to constitute potential breaches of security (Inciardi, 2007).

Fourth Amendment

The **Fourth Amendment** reads,

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.

Fourth Amendment: Guarantees the right to be free from unreasonable searches and seizures.

The right to privacy is a paramount concern of the Fourth Amendment, and so it guarantees the right to be free from unreasonable searches and seizures. What is reasonable inside prison walls is, of course, quite different from what is reasonable outside them. For all practical purposes, inmates have no Fourth Amendment protections because their prison cells are not "homes" of personal sanctuary deserving of privacy (*Hudson v. Palmer*, 1984).

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In Focus 13.1:

Any Complaints This Morning?

"Any complaints this morning?" was the drill sergeant's daily cynical question to newly drafted soldiers during World War II. Of course, none of the draftees confined in the sweltering barracks were ever bold enough to make any complaint, although living conditions were such that they would not be tolerated by the courts if they existed in our prisons today. We wonder what these old soldiers would say about the following.

In dismissing a lawsuit in one case, the Supreme Court noted that the majority of prisoner petitions are frivolous and/or malicious, cost taxpayers millions of dollars, and waste precious court time. Florida attorney general Bob Butterworth asserted, "My office spends nearly $2 million a year defending that state against inmate suits, most of which contain ridiculous charges or demands" (Butterworth, 1995, p. 1). Similarly, Idaho deputy attorney general Timothy McNeese noted that fully 27% of all litigation in Idaho's federal district courts involve inmate petitions, most of which are "meritless," are "downright frivolous," and "no doubt are filed by inmates out of frustration and anger and desire to get even with a correctional employee or the 'system'" (McNeese, 2010, p. 321). Presented below are some examples of frivolous and/or malicious petitions gleaned from Butterworth and McNeese that judges must wade through to get to prisoner petitions that are really deserving of attention. The sheer audacity of these examples may put a smile on your face, but they are no laughing matter to the courts, prison administrators, taxpayers, and prisoners with real grievances whose petitions are lost in the pile:

Prisoner starts a riot, shatters glass in his cell, and files an Eighth Amendment suit claiming cruel and unusual punishment because he cut his foot on the glass.

Prisoner sends for information about prison security and locks and sues because the warden refused to give him the mail containing the information.

Prisoner sues because his ice cream was half melted when it was served to him.

Prisoner sues over unsatisfactory haircut.

Prisoner sues because jailers cut her sausage into small pieces because she had been caught previously masturbating with a whole sausage.

Prisoner sues because he was required to eat off a paper plate.

Prisoner files more than 140 actions in state and federal court over finding state and federal court over finding gristle in his turkey leg.

Prisoner sues to receive fruit juice at meals and an extra pancake at breakfast.

Prisoner who murdered five people sues because he was forced to watch network television after lightning knocked out the prison's satellite dish. These programs contained violent material this multiple murderer said was objectionable.

Prisoner loses a suit claiming his rights as a Muslim were violated because the prison put "essence of swine" in his food, then converts to Satanism and demands tarot cards and "doves' blood."

Prisoner sues because the disciplinary cell he was placed in had no electrical outlet for his television set.

In *Turner v. Safley* (1987), the Supreme Court enunciated what has come to be known as the *balancing test*, which means that the courts must balance the rights of inmates against the interests of penological concerns of security and order. In ruling that lower courts were wrong in applying the strict scrutiny standard of review (a standard of review used by the courts if a "fundamental right" [anything in the Bill of Rights] or a "suspect classification" [race, religion, or national origin] is involved) to inmates' constitutional complaints, the Court ruled that these cases require a lesser standard and involve the issue of whether a prison regulation that impinges on inmates' constitutional rights is "reasonably related" to legitimate penological interests. This "reasonableness" revolves around a number of factors, including whether there is a valid and rational connection between the regulation and a legitimate government interest that is justified in the name of staff and inmate safety and security.

Ethical Issue:

What Would You Do?

You are a prosecutor in a jurisdiction that is determined to stamp down hard on crime. You have a case before you of a one-legged man charged with stealing the left boot of a pair of cowboy boots worth $300, making the theft a felony. The defendant has two prior felony convictions, and this would be his third if convicted. You want to dispose of the case quickly with a plea bargain and offer to reduce the charge to a misdemeanor if the defendant will plead guilty. You also tell him that if he does not take the plea, you will charge him as a habitual offender under the state's three-strikes law. The defendant refuses to plea, saying that the theft should be a misdemeanor anyway because he stole only one boot. What will you do? After you have decided, take a look at Bordenkircher v. Hayes (1978) and see what the prosecutor decided and how this case was actually decided by the Supreme Court (yes, it actually happened).

According to the balancing test, viewing of opposite-sex inmates in embarrassing situations is constitutionally valid if it is reasonably related to legitimate penal interests. The lower courts have interpreted "reasonableness" and concluded that although female officers conducting or observing strip searches of male inmates is tolerated in emergency situations, similar observation and searches by male officers of female inmates are considered unreasonable. This double standard has been justified on two grounds that (a) men do not experience loss of job opportunities if they are forbidden to frisk female inmates, and (b) intimate touching of a female inmate by a male officer may cause psychological trauma because many female inmates have histories of sexual abuse (Bennett, 1995). This raises the question of the possible legal validity of complaints about same-sex body searches if the complainant can show prior sexual abuse by a same-sex person. For heterosexual inmates may marry, and that to deny their request is discriminatory and a violation of their rights of sexual expression. How will you rule and why?

Liability attaches to prison officials for inmate–inmate assaults if officials display deliberate indifference to an inmate's needs (Vaughn & Del Carmen, 1995). The courts have struggled to make plain what "deliberate indifference" means, but basically it occurs when prison officials know of, but disregard, an obvious risk to an inmate's health or safety (*Wilson v. Seiter*, 1991). In other words, prison officials must not turn a blind eye to situations that obviously imperil the health or safety of inmates entrusted to their care. Purposely placing a slightly built and effeminate young man in a cell with a known aggressive sexual predator is an example of a violation of the deliberate indifference standard for which prison authorities would be liable for any injuries suffered. For inmates to prevail in suits involving deliberate indifference claims, they must prove that (a) they suffered an objectively serious unusual punishment.

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

The pertinent part of the Eighth Amendment for us is the part that addresses cruel and unusual punishment. According to the U.S. Supreme Court, cruel and unusual punishment is punishment applied “maliciously and sadistically for the very purpose of causing harm” (*Hudson v. McMillian*, 1992), although the inmate is responsible for proving that the punishment was so applied. Eighth Amendment protections are denied by prison officials not only if they do something to inmates they should not but also if they fail to do something they have a duty to do. Prison officials must provide inmates with the basic amenities of life, such as food and medical attention, and they must provide them with protection from the physical and sexual predations of other inmates.

Ethical Issue:

What Would You Do?

You are a district judge hearing the case of two male inmates claiming to be in love who have filed a suit demanding to be allowed to marry and be housed in the same cell. They also claim that prison authorities have purposely housed them in separate units so that they have no contact with each other. You know that the Prison Rape Elimination Act of 2003 (PREA) has been a potent tool for the selective sanctioning of inmates for any sexual expression at all. The state claims that prison officials must limit sexual interactions among inmates because of their potential liability regarding allegations of prison rape under PREA. The state also claims that such a thing is unprecedented and could lead to all kinds of unrest in the prison. The inmates claim that they are genuinely in love, that heterosexual inmates may marry, and that to deny their request is discriminatory and a violation of their rights of sexual expression. How will you rule and why?

Liability attaches to prison officials for inmate–inmate assaults if officials display deliberate indifference to an inmate's needs (Vaughn & Del Carmen, 1995). The courts have struggled to make plain what "deliberate indifference" means, but basically it occurs when prison officials know of, but disregard, an obvious risk to an inmate's health or safety (*Wilson v. Seiter*, 1991). In other words, prison officials must not turn a blind eye to situations that obviously imperil the health or safety of inmates entrusted to their care. Purposely placing a slightly built and effeminate young man in a cell with a known aggressive sexual predator is an example of a violation of the deliberate indifference standard for which prison authorities would be liable for any injuries suffered. For inmates to prevail in suits involving deliberate indifference claims, they must prove that (a) they suffered an objectively serious deprivation or harm and (b) prison officials were aware of the risk that caused the alleged harm and failed to take reasonable steps to prevent it. *Wilson* is seen as a key decision favoring correctional agencies because of these stringent proof requirements.

Inmate medical care is also covered by the concept of deliberate indifference. As Cohen (2008) stated, "Our jails and prisons have increasingly become the de facto clinical depositories for hundreds of thousands of inmates who are very sick and who require all manner of specialty medical, dental, and mental health care. Prisons are not only the new mental asylums; they are the community hospitals and emergency wards for certain segments of the poor" (p. 5).

The medical needs of inmates in today's prisons are as well addressed as those of the average free person of similar class background presenting with similar health problems. Indeed, inmates are the only group of people in the United States with a constitutional right to medical care. According to a Bureau of Justice that disciplinary segregation is not an atypical hardship relative to the ordinary hardships of imprisonment.

CURTAILING PRISONER PETITIONS

LO 13.3 State how and why prisoners' petitions have been curtailed.

According to Federman (2004), two congressional acts signed into law in 1996—the Prison Litigation Reform Act (PLRA) and the Antiterrorism and Effective Death Penalty Act (AEDPA)—have severely curtailed prisoner access to the courts. Both acts were passed in part to reduce the thousands of lawsuits filed by inmates that clog the federal courts. In the year of the passage of these acts, inmates filed 68,235 civil rights lawsuits in the federal courts, compared with fewer than 2,000 in the early 1960s (Alvarado, 2009). By 2000, the number of such lawsuits had dropped to 24,519 (Seiter, 2005), a 64% decrease from the 1996 figure. Despite claims that these acts are "silencing the cells" (Vogel, 2004), the number of lawsuits filed any person of life, liberty, or property without due process of law.

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.

This is the due process clause of the Fourteenth Amendment and is the legal basis for granting limited procedural rights to individuals under correctional supervision. The due process clause was first applied to inmates facing disciplinary action for infractions of prison rules in *Wolff v. McDonnell* (1974). In *Wolff*, the Supreme Court declared that although inmates are not entitled to the same due process rights as an unconvicted person on the outside, they are entitled to some. These rights are (a) to receive written notice of an alleged infraction, (b) to be given sufficient time (usually 24 hours) to prepare a defense, (c) to have time to produce evidence and witnesses on their behalf, (d) to have the assistance of nonlegal counsel, and (e) to have a written statement outlining the disciplinary committee's findings.

In *Sandin v. Conner* (1995), the Supreme Court clarified and trimmed back inmate rights. The Court declared that the above due process rights are triggered only by any disciplinary action that may result in the loss of "good time," which amounts to an extension of an inmate's sentence. DeMont Conner had been given 30 days of punitive segregation for making foul and abusive comments to an officer while being subjected to a strip search. The Court ruled that due process rights are not triggered by actions that result in temporary placement in a disciplinary segregation unit, which does not amount to an extension of sentence. The Court also concluded

> for an outsized share of filings" in federal district courts. In 2005, nearly 10 percent of all civil cases filed in federal courts nationwide were prisoner complaints challenging prison conditions or claiming civil rights violations. Most of these cases have no merit; many are frivolous. Our legal system, however, remains committed to guaranteeing that prisoner claims of illegal conduct by their custodians are fairly handled according to law. The challenge lies in ensuring that the flood of nonmeritorious claims does not submerge and effectively preclude consideration of the allegations with merit.

As the name implies, the AEDPA is mostly about antiterrorism and the death penalty rather than an act specifically designed to limit habeas corpus proceedings. It was passed in response to the bombing of the Murrah Federal Building in Oklahoma City, with the reform of habeas corpus law attached as a rider. The AEDPA does not eliminate inmates' rights to habeas corpus, but it does restrict its availability (Alvarado, 2009). It is still more than 12 times what it was during the 1960s. Figure 13.1 is from a U.S. Courts (2020) report comparing all kinds of prisoner petitions to federal appeals courts with other types of cases. In 2019, prisoner petitions were down 16.4% from 2018.

Description

Figure 13.1 Prisoner Petitions and Other Cases Filed in Federal Appeals Courts, April 1, 2018, to March 31, 2019

Source: U.S. Courts (2020).

Note: Beginning in March 2014, data include miscellaneous cases not included previously.

The primary intention of the PLRA was to free prisons and jails from federal court supervision and to limit prisoners' access to the federal courts. Both intentions have largely succeeded. Among the requirements of the PLRA is one that state inmates cannot bring a Section 1983 (civil rights) lawsuit in federal court unless they first such as filing a written grievance with the warden. The PLRA also states that inmates claiming to be unable to afford the required filing fee for the lawsuit may still need to pay a partial fee, which will be collected whenever money appears in their inmate accounts.

An issue raised by the passage of the PLRA reached the Supreme Court in *Jones v. Bock* (2007), which asked whether the PLRA requires inmates bringing federal civil rights suits to show that they have exhausted all administrative remedies, or the state to prove that they were not exhausted. In a unanimous opinion, the Court ruled that the exhaustion of administrative remedies was not required by the PLRA and that prisoners could bring civil rights lawsuits without the need to demonstrate they have exhausted all administrative remedies. The opinion did not ignore the flood of frivolous suits but intimated that this concern was secondary to the genuine complaints prisoners may have. In *Jones*, Justice Roberts wrote,

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Prisoner litigation continues to "account

> for an outsized share of filings" in federal district courts. In 2005, nearly 10 percent of all civil cases filed in federal courts nationwide were prisoner complaints challenging prison conditions or claiming civil rights violations. Most of these cases have no merit; many are frivolous. Our legal system, however, remains committed to guaranteeing that prisoner claims of illegal conduct by their custodians are fairly handled according to law. The challenge lies in ensuring that the flood of nonmeritorious claims does not submerge and effectively preclude consideration of the allegations with merit.

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A review of Supreme Court decisions on habeas corpus since the AEDPA found that they have upheld the reforms largely as intended by Congress (Scheidegger, 2006). Although some may decry both statutes, the Court's attitude toward them is probably a good thing for all involved for a number of reasons. First, it frees up the federal courts to deal with pressing inmate issues that are really repugnant to the Constitution. Second, we all know that "crying wolf" too often leads to the dismissal of genuine claims, and if the situation continued as it was before the 1996 reforms, the solution may just have been the return to a complete hands-off policy. Third, it saves taxpayers many millions of dollars fighting frivolous lawsuits that simply relieve the boredom of mischievous inmates (again, this does not mean that there are no substantively meaningful claims filed). Many states, aware that the courts could swing back to more active involvement, and of the high cost of defending lawsuits, have established internal mechanisms to more effectively deal with inmate concerns, such as outside mediators and the creation of ombudspersons. Although the PLRA and AEDPA have limited inmate access to the courts, in a roundabout way they have given inmates more immediate and local ways to make their grievances known.

THE DEATH PENALTY AND PUBLIC OPINION

LO 13.4 Discuss the legal and ethical issues surrounding the death penalty.

The most controversial issue in corrections is the penalty of death. Given its finality (there is no way to put right an execution of someone later found to be innocent), it is understandable that it has been subjected to intense legal and ethical scrutiny. This has not always been the case, because throughout human history the death penalty has been considered a legitimate, appropriate, and necessary form of punishment. As indicated in Figure 13.2, a clear majority of the American public still favors its retention (Gallup, 2019).

Description

Figure 13.2 Results of 2019 Gallup Poll on Public Attitudes About the Death Penalty

Source: Gallup (2019).

Note from Figure 13.2, showing trends in public opinion from 1930 to 2019, that in 1966 there were more people against the death penalty (47%) than for it (42%) ("no opinion" answers account for why the percentages in the figure never add to 100%). Note also that support for the death penalty was greatest during the 1980s and 1990s, with 1994 marking the highest level of support (80%) in the Gallup Poll's history. The most logical reason for this is that public opinion is heavily swayed by the crime rate—as crime goes up, so does support for the death penalty. According to Uniform Crime Reports data, the violent crime rate in 1994 was 713.6 per 100,000 population, which is 3.25 times higher than the 1966 violent crime rate of 220 per 100,000 (Federal Bureau of Investigation, 2013).

The currents of public opinion doubtless contribute to the number of states that have retained the death penalty. Figure 13.3 shows that 25 states, the federal government, and the U.S. military retain the death penalty, and 22 states have abolished it or placed moratoria on it. Executions are down 75% since 1996, and only 7 states executed anyone in 2019 (Death Penalty Information Center, 2020a). The United States, Japan, and South Korea, among the world's democracies, retain the death penalty. Figure 13.4 is a graph of the annual number of executions in the United States from the mid-1970s to January 2020.