



138
929
THS

LIBRARY
Michigan State
University

This is to certify that the
thesis entitled

The Impact of Law on Juvenile Detention Facilities

presented by

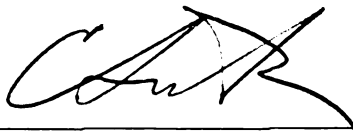
Wendy Jackman

has been accepted towards fulfillment
of the requirements for the

Master of
Science

degree in

Criminal Justice



Major Professor's Signature

08/23/05

Date

PLACE IN RETURN BOX to remove this checkout from your record.
TO AVOID FINES return on or before date due.
MAY BE RECALLED with earlier due date if requested.

DATE DUE	DATE DUE	DATE DUE

THE IMPACT OF LAW ON JUVENILE DETENTION FACILITIES

By

Wendy Jackman

A THESIS

**Submitted to
Michigan State University
in partial fulfillment of the requirements
for the degree of**

MASTER OF SCIENCE

Department of Criminal Justice

2005

ABSTRACT

The Impact of Law on Juvenile Detention Facilities

By

Wendy Jackman

This study examines whether the threat or fear of civil liability litigation provides a greater impetus than direct judicial order(s) for shaping and/or re-shaping policies, practices and procedures that govern juvenile detention facilities. Using Rosenberg's theory of The Fly-Paper Court, which proffers that judges are powerless to effect significant social reform because of their lack of implementation powers, and courts provide an illusion of change, an electronic survey was created and distributed to 180 juvenile detention administrators across the United States. The results, though not conclusive, reveal that administrators express greater concern that their policies, practices, and procedures are fashioned in accordance with the American Correctional Association (ACA) guidelines and/or state regulations, as opposed to direct judge-made rule or judicial order(s)

To the pillars in my life: my mother, **Noreen Jackman** and aunt, **Marlene Elcock**.

ACKNOWLEDGEMENTS

I would like to express my gratitude to my thesis Chair, Dr. Christopher Smith, and my committee members, Dr. Homer Hawkins, and Dr. Vincent Hoffman for their time and unwavering support, and for allowing me to benefit from their scholarly input and wisdom towards the completion of this project.

I would also like to extend my appreciation to Mr. Larry Miesner for his invaluable contribution, and Ms. Vernie Nichols for donating her skill towards this endeavor.

TABLE OF CONTENTS

INTRODUCTION.....	1
CHAPTER 1	
THEORETICAL FRAMEWORK.....	5
Review of Literature.....	8
CHAPTER 2	
METHODOLOGY.....	27
CHAPTER 3	
RESULTS.....	30
Survey Instrument.....	30
Research Questions.....	30
CHAPTER 4	
DISCUSSION.....	35
Findings.....	35
Conclusion & Recommendations.....	38
APPENDIX.....	41
BIBLIOGRAPHY.....	46

Introduction

Law and law-making institutions assert an immeasurable influence on society, providing the foundation upon which policies, practices, and procedures within criminal justice institutions stand. This thesis presents a study on the impact of law on juvenile detention facilities. By conducting a national survey, this study seeks to examine juvenile detention administrators' perceptions and law's impact on their policies, practices, and procedures.

Legal norms and institutions have frequently been called upon to address problems and effect change, specifically within correctional facilities. Until the 1960s the separation of powers among the executive, legislative, and judicial branches of government was presumed to prevent the courts from intervening in the operations of any executive agency. Judges presumed that because they were not penologists, their intervention in the internal administration of prisons would disrupt prison discipline. They also believed that prisoners did not have the same rights as free citizens under the Constitution. This belief was well stated by a Virginia judge in *Ruffin v. Commonwealth* (1871): "The prisoner 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" (Clear & Cole, 1997).

However, since the late 1960s the courts have become increasingly involved in prison matters. The end of the traditional hands-off policy¹ was signaled by the U.S. Supreme Court decision in *Cooper v. Pate* (1964), which stated that prisoners in state and local institutions are entitled to the protections

¹ A judicial policy of noninterference in the internal administration of prisons.

of the Civil Rights Act of 1871. The justices ruled that a prisoner could sue a warden or other official under Title 42 of the United States Code, Section 1983 (42 U.S.C. 1983), which imposes civil liability on any state or local official who deprives someone of federal constitutional rights. In that ruling, the Court recognized that prisoners are *persons* whose rights are protected by the Constitution, and prisoners could use the federal courts to challenge the conditions of their confinement in state and federal institutions (Clear & Cole, 1997). As Jacobs (1983) points out, "Just by opening a forum in which prisoners' grievances could be heard, the federal courts destroyed the custodian's absolute power and the prisoners' isolation from the larger society. And the litigation in itself heightened prisoners' consciousness ..."

The amount of prisoner-initiated litigation skyrocketed after *Cooper v. Pate* (1964). The number of suits brought by state prisoners and pending in federal courts alone rose from 218 in 1966 to 26,824 in 1992 (Clear & Cole, 1997). The first successful cases concerning prisoners' rights involved the most excessive prison abuses: brutality and inhuman physical conditions. For example, in 1967 the Supreme Court invalidated the confession of a Florida inmate who had been thrown naked into a "barren cage," filthy with human excrement, and kept there for 35 days. Gradually, prisoner litigation has come to focus more directly on the daily activities of the institution, especially on administrative rules governing inmates' conduct. In 1969 the Supreme Court ruled in *Johnson v. Avery* that prison officials could not prohibit one inmate from acting as a jailhouse lawyer for another inmate unless the state provided "some reasonable alternative to assist

inmates in the preparation” of a claim. This was followed in 1977 by *Bounds v. Smith*, in which the court required that inmates have access to law libraries or to persons trained in the law (Clear & Cole, 1997).

We live in a litigious society, and the field of criminal justice is hardly immune to lawsuits. Those who support a system of civil liability for criminal justice officials argue that lawsuits deter harmful behavior and provide needed compensation to victims of misconduct and negligence (Lambert, Hall & Ventura, 2003). There is a substantial amount of literature on civil litigation against police officers, their attitudes and perceptions, as well as the factors responsible for and subsequent effects of such litigation (e.g. del Carmen, 1991; Kappeler et. al., 1991; Kappeler, 1993; Kappeler et. al., 1993; Vaughn & Coome, 1995; Vaughn, 1999; Kappeler, 2001; Pipes & Pape, 2001; Silver, 2001; Stevens, 2001; Vaughn et al., 2001; and Worrell, 2001). However, comparatively little or no research has been conducted on civil liability vis-à-vis adult and/or juvenile correctional staff. Lambert, Hall and Ventura (2003) noted that, “No studies could be located that examined the perceptions of correctional staff members on the issue of civil liability; it is therefore necessary to use the articles on the perceptions of police concerning civil lawsuits as a stepping stone.”

Consistent with a focus on law enforcement, Smith and Hurst (1997) conducted a national survey of police executives. The survey revealed that civil liability lawsuits led to law enforcement policy changes more frequently than constitutional decisions by the Supreme Court within recent years. According to the authors, among those respondents who cited pre-1985 cases as the most

recent policy changes from judicial decisions, nearly 80 percent pointed to appellate constitutional decisions rather than trial court civil liability cases. By contrast, among cases cited since 1991, a majority were concerned with civil liability issues rather than appellate constitutional decisions. For recent 1994 and 1995 cases cited as spurring policy changes, nearly two-thirds were civil liability cases (Smith & Hurst, 1997). Modeled after this study, my thesis will examine civil liability within a juvenile corrections context. My study hypothesized that the threat/fear of civil liability provides a greater impetus for policy change(s) than judicial order(s).

CHAPTER 1: THEORETICAL FRAMEWORK

Theory

The theory of the Fly-Paper Court proffered by Rosenberg (1991) suggests that courts are “powerless” to produce change or significant social reform primarily because of “their lack of implementation powers” (p. 336). At the core of his proposition is the belief that “turning to courts to produce significant social reform ... credits courts and judicial decisions with a power that they do not have” (p. 338). His accusation of misplaced confidence solely addresses a judge-made rule or judicial order, he argues that courts and/or judicial orders are only effective when pre-existing conditions that facilitate change are present.

Rosenberg (1991) adopts an almost cynical view of litigation as instrumental in effecting social reform/change. Through his eyes, litigation seeking remedial orders by judges is presented as largely symbolic and “siphons off crucial resources and talent” (p. 339). Essentially, courts “serve an ideological function of luring movements for social reform to an institution that is structurally constrained from serving their needs, providing only an illusion of change” (p. 341). He argues that judges impact on social policy and societal change is limited by three separate constraints built into the structure of the American political system: the limited nature of constitutional rights, the lack of judicial independence, and the judiciary’s lack of power of implementation. These constraints can be overcome when: (1) there is “ample legal precedent for change”; (2) there is “support for change from substantial numbers in Congress and from the executive”; and (3) “there is either support from some citizens or at

least low levels of opposition from all citizens,” in addition to one of the following four conditions: (a) positive incentives to induce compliance; (b) costs to induce compliance; (c) a market mechanism for implementation; or (d) administrators and officials crucial for implementation who are willing to act and see court orders as a tool for leveraging additional resources or for hiding behind (Sturm, 1993). In other words, effective policy change depends on factors external to the judiciary; judges cannot foster change on their own.

In essence, Rosenberg negates the efficacy of litigation to produce social reform/change. He contends that there is no existing data suggesting “that court decisions mobilize supporters of significant social reform”. Rosenberg compares the contribution of courts vis-à-vis the involvement of Congress and the executive branch in the arena of civil rights. Using the *Board v. Board of Education* decision as his platform, he posits that,

Before Congress and the executive branch acted, courts had virtually *no direct effect* on ending discrimination in the key fields of education, voting, transportation, accommodations and public places, and housing. Courageous and praiseworthy decisions were rendered, and nothing changed. Only when Congress and the executive branch acted in tandem with the courts did change occur in these fields. In terms of judicial effects, then, *Brown* and its progeny stand for the proposition that courts are impotent to produce significant social reform (pp. 70-71).

Additionally, Rosenberg states that “there was growth in the membership and activities of pro-segregation groups such as the White Citizens Councils and the Ku Klux Klan in the years after the *Brown v. Board of Education*” decision (pp. 341-342). He uses this as evidence of the possibility that judicial intervention is counter-productive. Rosenberg concludes that the threat of

“federal fund cut-off” to a Southern school board provides a greater incentive for desegregation than a judicial order.

Rosenberg is seemingly persuaded that litigation in the form of a judicial order(s) will be perfunctory without the cooperation of *insiders*, that is, the administrators and staff of the institution subject to litigation or reform. Judges lack the capacity to ensure compliance with, and avoid unanticipated consequences of judicial orders, notwithstanding the fact that judicial intervention invites public scrutiny of the administration. This in turn may contribute to the demoralization of staff manifested in resistance and disobedience to judicial orders.

In light of the ensuing debate surrounding judicial intervention and the role of the judiciary in public policy, the author of an article in the *Yale Law Review* (1979), asserts that “bureaucrats may willingly favor judicial intervention. The court’s intervention might secure a level of funding that the bureaucrats would not have obtained through the normal political process” (p. 517). In defense of judicial intervention, the author surmises that judges are poised “to fashion a rational plan because they are relatively free of the pressures of lobbyists, bureaucracies, and interest groups. Courts, in sum, can create the apparatuses needed to make and monitor decisions” (p. 518).

My study raises the issue of civil liability and its role in policy-making/re-shaping within juvenile detention facilities. My hypothesis is that the threat or fear of civil liability provides a greater incentive than judge-made orders for juvenile detention administrators to implement changes or re-shape the policies,

practices, and procedures that govern their facilities. If the responses to the survey indicate that civil liability is more powerful, these results may serve to reinforce Rosenberg's theory that courts indeed provide an "illusion of change," that direct judicial orders are less powerful than generally believed for shaping policy and procedure in institutional settings.

Review of Literature

Smith and Hurst (1997) sought to evaluate the impact that civil liability cases and constitutional decisions have as a source of, and influence over, law enforcement policies and practices by conducting a national survey of police executives. In this 1996 survey, 150 survey forms were sent to a sample of police executives representing a diverse mix of agency sizes and geographic regions. Fifty forms were sent to "large" agencies, which were defined as those that contained 1,000 or more sworn officers. Additionally, in an effort to ensure national representation among respondents, 50 forms went to "small" agencies, which were defined as those that contained 25 to 90 sworn officers (Smith & Hurst, 1997).

Forty-two percent of the respondents recalled when one of their agencies' policies or training practices changed as a result of a U.S. Supreme Court decision, 60% believed that the U.S. Supreme Courts recent constitutional decisions had little impact or made their jobs easier, while nearly 80% believed that recent trends in trial court civil liability cases made their jobs more difficult. According to Smith and Hurst (1997), "the increased frequency and contemporary predominance of civil liability cases as a source of policy change

may indicate that such cases have recently assumed greater importance than constitutional decisions as an influence over law enforcement policies and practices.” The authors suggest that civil liability decisions have recently had especially important effects in shaping law enforcement policies and practices.

Barrineau (1994) accurately and succinctly noted that criminal justice liability is an important and growing field. However, there is a noticeable absence of research on civil liability involving staff within adult and/or juvenile correctional facilities. Lambert, Hall and Ventura (2003) while pleading for future research on civil liability and its implications for staff at correctional facilities, reported the findings of their exploratory study to determine the attitudes, experiences and perceptions of the staff at a county jail in Florida about civil liability. The study yielded a total of 107 completed surveys, a response rate of 60 percent. The authors found that slightly less than half of the jail staff believed that they had been adequately educated in civil liability or that their department would support them if they were sued in the performance of their duties.

A mere 13% reported knowing of a specific policy that had been changed because of litigation, and 68% reported knowing of no litigation-related policy change. In addition, among those respondents who reported knowing another jail staff member who had been sued: 17% reported knowing only one person who had been sued, 40% reported knowing two staff members who had been sued, 13% reported knowing three people who had been sued, and 30% reported knowing four or more individuals who had been sued (Lambert, Hall & Ventura, 2003). The authors are persuaded that these findings have implications

for jail administrations, particularly in terms of the need for staff training on civil liability.

In its landmark decision *Monroe v. Pape* (365 U.S. 167, 1961), the U.S. Supreme Court began the process of resuscitating the Civil Rights Act by holding that abuse of state delegated authority constituted action under color of law² for purposes of Section 1983 jurisdiction. Prior to *Monroe*, the Civil Rights Act of 1871 was enacted by Congress to allow citizens whose constitutional rights were violated as avenue of redress. Congress enacted this legislation in large part because of the failure of state governments in the south to control the lawless behavior spurred by activities of the Klu Klux Klan following the Civil War. Congress was interested in providing a federal remedy for the violation of individual constitutional rights. Lawsuits brought under this legislation are now known as Title 42 United States Code Section 1983³ as they provide a remedy for deprivation of civil rights (Ross, 1997). Section 1983 lawsuits claim that state officials have deprived the prisoners of their constitutional rights, such as adequate medical treatment, *Estelle v. Gamble*, 429 U.S. 97, 103 (1976); protection against excessive force by correctional officers, *Hudson v. McMilliam*, 112 U.S. 995 (1992); violence by other inmates, *Farmer v. Brennan*, 114 U.S.

² In *Screws v. United States*, 325 U.S. 91 (1945), the Court held that a sheriff's fatal beating of a black prisoner constituted conduct "under color" of the law. In effect, the Court, through Justice Douglas, defined "under color" of the law as meaning "under the pretense" of law. Thus, at least in criminal actions under the Civil Rights Act, conduct "under color of law" encompassed unauthorized, and indeed unlawful, conduct of a state officer, as long as the "pretense" of authority with which he acted furthered the constitutional violation in any way (Barrineau, 1994).

³ Every person, who under color or any statute, ordinance, regulation, custom, or usage of any State or Territory, subjects or causes to be subjected, 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, suit in equity, or other proper proceeding for redress.

1970 (1994); due process in disciplinary hearings, *Wolff v. McDonnell*, 418 U.S. 539 (1974); and access to awarded money damages or other relief, *Bounds v. Smith*, 430 U.S. 817 (1977).

Prior to *Monroe*, it was extremely difficult to hold individual police or correction officers liable under Section 1983 because they had to be performing actions under color of law. Before 1961, the accepted interpretation of Section 1983 was that a state official who acted in violation of state law was not acting under color of state law. *Monroe* changed and expanded this concept of acting under color of law to include actions of the police or correction officials who were authorized by state law or by departmental policy. As a result, correctional officers can be held liable for their actions or omissions under Section 1983 (Ross, 1997).

Monell v. Department of Social Services of the City of New York (436 U.S. 658, 1978) represents another crucial decision regarding civil liability. The *Monell* decision held that local entities of government may be liable for unconstitutional action if taken on the part of the officer who is performing actions in accordance with the agency's policy or custom. This case has significant bearing to corrections as both the individual officer and the department can be held liable for actions or inactions. *Monell* has encouraged the filing of numerous lawsuits against both jail and prison facilities and officers on the idea that if an officer is unable to pay for damages, the government entity will, if custom and policy can be established (Ross, 1997).

Both *Monroe* and *Monell* were instrumental in opening the door for prisoner litigation in corrections. After the *Cooper* case, the 1960s through the 1970s witnessed a marked increase in prisoner litigation filed in federal courts. This correctional legal period has been characterized as the “hands-on-doctrine,” “judicial activist,” and/or “interventionist” era (Ross, 1997). In the first year (1966) that the Administrative Office of the U.S. Courts recorded prisoner filings, there were only 218 cases filed. In 1970, the number climbed to 2,030, and by 1994, the number increased to 36,318 (Ross, 1997). In response to a survey conducted by Correction Compendium, 47 states reported that \$2.7 million were awarded in compensatory damages, punitive damages, and attorney fees in cases lost to and settled with prisoners during 1983 and 1984 (Ross, 1997).

Sturm (1993) notes that litigation contributes to inmate violence by raising inmates' expectations, undermining prison officials' authority, widening the gap between administration and staff, and limits the discretion of prison officials. Other researchers suggest that judicial intervention has the inherent ability to destabilize the authority of organizational administrators and staff (Ekland-Olson & Martin, 1990). Dilulio offers two schools of thought regarding judicial intervention, *judicial activism* and *judicial restraint*. Judicial activism maintains that the judges' intervention has been both constitutionally proper and highly effective, that where judges have intervened, prison conditions have improved (Dilulio, 1990). Judicial restraint suggests that judges' intervention has been both constitutionally irresponsible and largely ineffective. According to Dilulio, judges are democratically unaccountable “generalists” lacking the expertise and

resources to determine appropriate correctional policies and practices. Where judges have intervened, costs, prison violence, and other problems have mounted.

Several authors, Jacobs (1977); Hopper (1985); Crouch and Marquart (1989); and Yackle (1989) examine the impact of litigation on prison systems via judicial order(s). These examples, although anecdotes, help to provide justification for my study and hypothesis. With a penchant for detail, the authors describe conditions and/or practices of diverse prison systems that were deemed unconstitutional and the intervention strategies reflected in litigation that resulted in immediate impact. Although litigation has been credited with transforming these prison conditions, mention must be made of the often unintended consequences and opposition that accompanied such intervention.

Employing methods such as participant observation; document analysis; records sampling; and survey research, Jacobs (1977) portrays the Stateville penitentiary as an entity unto itself, autonomous in nature and exclusive of its institutional environment. Plagued with instability and inefficiency, the penitentiary fell prey to external institutional pressure from the federal courts, resulting in a number of cases being filed between 1954 and 1961.

The increasing number of black inmates and a societal rise in "black nationalism" were intervening factors in the institutional concentration of Black Muslims; a religious sect that challenged the institutional authority of administrators and officers concerning conditions of confinement. The first Section 1983 of the Civil Rights Act was filed against Stateville in 1962 arguing

for the recognition of the Black Muslims as a religious group. The case, *Cooper v. Pate* (1964), was challenged by Stateville administrators claiming that any concessions made to the Muslims would undermine correctional control. The administrators and staff viewed the intervention of the court as illegitimate; they resisted and found ways to circumvent new rules.

This ruling in favor of the Black Muslims became the first instance of court ordered reform penetrating a once autonomous institution. According to Carroll (1998), for 15 months after the order was entered, corrections officials outrightly defied the court order, publicly denigrated the judge, and threatened to file suit to dismiss the special master and have his staff investigated for criminal charges. Although corrections officials' resented the intrusion, their motivation to comply with court orders emanated from their fear of being sued. Jacobs (1977) notes, "The decision makers don't like to be sued, hate going to court, and fear personal liability." The author also notes that changes in the prison mirrored changes in the broader society, such as, the civil rights movement; pressure from media and activists; and the introduction of trained professionals as administrators, rather than from direct judicial orders. The legal process itself and the symbolic importance of the decisions, not their substance, destabilized the traditional regime.

Nazareth Gates and three other inmates sought relief from the conditions and practices of the Mississippi State Penitentiary. The penitentiary was represented in the person of John Collier, the superintendent at the time; thus, *Gates v. Collier* (1971) was born (Hopper, 1985). The prisoners contended that

their confinement deprived them of rights guaranteed by the First, Eighth, Thirteenth, and Fourteenth Amendments.

The major issues in *Gates* included, but were not limited to, racial segregation; housing units were unfit for humans, that is, the water supply was contaminated and the sewage system was inadequate which led to the spread of infectious diseases; inadequate medical staff and facilities; prisoners were confined to a “dark hole” without clothes, hygiene materials, and adequate food for up to 72 hours; inmates were subjected to corporal punishment and were given laxatives as punishment, some were deprived of clothing, adequate bedding, and food; and inmates who were subjected to disciplinary actions for violating prison rules were not informed of the charges against them, and were denied the right to present witnesses on their behalf (Hopper, 1985).

Judge William C. Keady's ruling on these conditions delivered on October 1972 was an indictment of the leadership and practices of the penitentiary officials. Wherever possible, he ordered the violations to be changed at once. Segregation of inmates by race and mail censorship were immediately curtailed. In addition, he issued rulings on petitions regarding disciplinary proceedings, law libraries, religious rights of inmates, and medical care. Perhaps most important in impact was a 1975 ruling which ordered that each inmate be provided at least 50 square feet of living space (Hopper, 1985).

Hopper (1985), while recognizing the value and role of litigation in transforming conditions at the Mississippi Penitentiary adds two sobering points. Firstly, he asserts that the Federal Court's intervention simply expedited changes

already in place, and facilitated changes in areas that were “lagging behind.” He notes that the prison “had taken long strides in the changing treatment of inmates by the time the court interceded (p. 61). Secondly, he notes (regrettably) that the *Gates* decision changed the landscape and nature of the relationships within the institution. He states,

“While Mississippi has been forced to move into the mainstream of American corrections, the small units and the informal nature of its old system have been lost. With the loss of informality and the creativity which sprang from it, Mississippi's penitentiary has become just another prison in which security and uniformity prevail (p. 54).

Crouch and Marquart (1989) provide a detailed account of the Texas prison system before and after litigated reform. The authors begin by acknowledging the role of the courts in improving prison conditions, stating that with at least 80% of the state prison systems having experienced some type of court order to reform, judicial intervention has become a widespread correctional reality.

Both authors surveyed and interviewed recruits and veteran officers in 1979 and 1980. Marquart worked as a uniformed guard from 1981 through 1983, the period when dramatic changes in Texas prison security were implemented. In addition, he and Crouch visited many Texas Department of Corrections (TDC) units regularly throughout the 1978-85 period and had numerous informal conversations with administrators, guards, and prisoners (Rhodes, 1992). *Ruiz v. Estelle* (1980) became the catalyst for the most comprehensive action suit in correctional law history. David Ruiz, a Texas prisoner, filed a suit in federal court against TDC and its Director, W.J. Estelle Jr., challenging the living and working

conditions within the prison. In that suit, Ruiz complained that the state's prisons were, inter alia, physically deteriorated, dangerous for prisoners and overcrowded (Crouch & Marquart 1989).

Before *Ruiz v. Estelle* (1980), Texas prisons enjoyed a national reputation for effective management and a “firm but fair” security system. The system's order and stability were based on an elaborate control structure developed over several decades which the authors describe as utilizing three major, largely informal mechanisms: a highly organized subculture among correctional officers, a wide array of punishments and rewards used to secure inmate conformity, and a practice of co-opting the inmate elite by employing its members as guards (Crouch & Marquart 1989).

After years of legal conflict and a lengthy trial, presiding Federal District Judge William W. Justice ruled in favor of the plaintiff. His scathing opinion detailed, among other problems, TDC's denial of adequate legal and medical services and failure to protect prisoners from the brutality of guards and inmate elites, otherwise known as “building tenders,”⁴ all in overcrowded facilities. For the judge, these conditions rendered unconstitutional TDC's control system, management style, and physical structure. Thus, he ordered reforms involving conditions of confinement (fire and work safety, sanitation), overcrowding, access to courts, medical care, discipline procedures, and prisoner supervision and control (Crouch & Marquart, 1989).

⁴ Building Tenders were dominant inmates who worked directly with officials to enforce order and maintain control. They primarily served as conduits of information.

However, the authors argue that judicial intervention caused an increase in violence as corrections officers lost their absolute power and prisoners became more assertive. The Texas Department of Corrections resisted the court-mandated reforms for a significant period of time. The reforms challenged values deeply ingrained in the organization's culture and supported by the larger political community; they also required a substantial increase in the correctional budget at a time when the Texas economy was in a severe downturn (Rhodes, 1992).

During 1984 and 1985, the prison administration's control became tenuous; violence among inmates and between inmates and staff reached all-time system highs (Rhodes, 1992). There was an increase in "rapes, assaults, murders, and other forms of prison disorder," as well as a "demoralized and beleaguered staff" (Crouch & Marquart, 1989). Gang activity, sales of drugs, and prostitution increased as the old methods for maintaining discipline were dismantled (Rhodes, 1992). Dilulio (1987) states that the disorder and violence which swept the Texas prisons in the aftermath of the *Ruiz* decision was not due to the dismantlement of a totalitarian system of repression, but to the administrative instability and abandonment of the formal system of control. Although the court was not directly responsible for what happened, in Dilulio's opinion, it nonetheless played a key role. He notes that events might have taken a different turn had Judge Justice been,

... more judicious, his information better, his appreciation for what TDC had achieved in the past less unkind, and his preoccupation with its sores less total, or if he and his aides had troubled themselves to consider the possible unintended consequences of their sweeping actions, there can

be no doubt that things would not have degenerated as they did. The new legal framework imposed on TDC was not ... a "straitjacket"; rather it was more nearly a poorly designed and ill-fitting suit which the agency was rushed into wearing and which eventually, and predictably, burst at the seams (Carroll, 1998, pp. 14-15).

In his book *Reform and Regret*, Yackle (1989) vividly describes Alabama's prison conditions as "unfit for human habitation, filthy, noisy, dimly lit, unventilated, vermin-infested, pipes and windows broken, toilets would not flush and electrical wiring exposed."

The book evolves around two cases that ignited penal reform: *Pugh v. Sullivan* (1972) and *James v. Wallace* (1972). According to the author, the twin themes of overcrowding and violence appeared in the complaint filed by Jerry Lee Pugh, one of comparatively few white prisoners assigned to live with a large number of black inmates in a 200-bed dormitory. Racial tensions were heightened and Pugh was badly beaten and left to die, his medical records showed that he sustained multiple lacerations and fractures and part of his skull was crushed. On the other hand, a claim developed in the *James* case that prisoners were entitled not only to protection from abuse at the hands of penal authorities and other inmates, but to educational and vocational programs for their benefit (Yackle 1989).

Federal District Judge Frank Johnson held that the "totality of circumstances" in the prison system violated the Eight Amendment and ordered state authorities to make numerous changes in the prison system to eliminate unconstitutional conditions. Judge Johnson enumerated a list of things to be accorded to inmates in the "Minimum Constitutional Standards for Inmates of

[the] Alabama Penal System” (Yackle, 1989). Under these “minimum constitutional standards,” prisoners were to regularly receive specified clothing, linens, storage lockers and other personal items, each prisoner was entitled to at least 60 square feet of living space with “meaningful” jobs and a chance to enroll in “basic” education or “vocational training programs.” In addition, he required that prisoners be classified and separated on the basis of their propensity for violence, educational and vocational needs, and their qualifications for “community-based” facilities (Yackle, 1989).

As evidenced, judges lack complete control and cannot necessarily guarantee implementation. Yackle expresses his ambivalence about the efficacy of the federal court’s intervention with what he sees as its limited impact and failure to make fundamental changes in penal policy. He describes the failure of the court’s effort to reform Alabama’s system for classifying inmates for purposes of determining custody grades and program assignments. The court ordered defendants to contract with an outside organization to implement a new classification plan. The Prison Classification Project (PCP) developed new procedures and criteria for classification and reclassified all inmates in the Alabama prisons. A year after PCPs departure, an expert found “little trace of the work that [PCP] had done” (Sturm, 1993). Over a two-year period, not much progress was made, and changes that were made were quickly abandoned (Carroll, 1998).

In like manner, Mays and Taggart (1985) and Chilton (1991) document prison systems that were engaged in equally unconstitutional practices and

housed prisoners under violative conditions, but were less amenable to reform. Mays and Taggart (1985) document a confluence of factors that lead to a 1980 prison riot, a riot which proved to be the impelling force behind a consent decree and substantive changes within the Department of Corrections.

In 1977, a class action lawsuit was filed on behalf of Dwight Duran, Lonnie Duran, Sharon Towers, and other inmates detained by the New Mexico Department of Corrections against then Governor Jerry Apodaca and other state officials. The *Duran* lawsuit came in response to two highly related concerns: (1) actual living conditions at the penitentiary, and (2) departmental policies and practices which made for an unstable environment within the institution (Mays & Taggart, 1985).

The Federal court played a prominent but passive role, allowing the parties to attempt reaching solutions on their own timetables. There was no substantial improvement in living conditions, and although partial consent decrees were signed in 1979, delays in implementation of the new policies frustrated the expectations of the inmates and caused additional mistrust (Mays & Taggart, 1985). Thus, with inmates hope for improvements apparently abandoned, the stage was set for the 1980 prison riot. Notably, five months after the riot, the full consent decree was signed and the task of reforming the Department of Corrections began. The department was reorganized; a new judge was appointed; and a "compliance monitor" was appointed in the department to ensure adherence to the consent decree (Mays & Taggart, 1985).

Chilton (1991) presents an exploratory study of the *Guthrie v. Evans* (1987) lawsuit, which resulted in institutional reform at the Georgia State Prison (GSP). Data for his study were gathered via direct observations of proceedings, interviews with key decision-makers, and archival analysis of relevant court records, monitors' reports, the U.S. Civil Rights Commission study of Georgia prisons, departmental, legislative, and gubernatorial reports, other relevant court decisions, and various newspaper and news magazine reports.

GSP was autonomous, a self-sustaining prison community that did not require state funds for its operations. This insulation also isolated GSP from changes in penology; thus, it continued practices of racial segregation, corporal discipline, and forced labor unchecked by outside authorities. GSP also used the hole: a small, dark, bedless and windowless room for solitary confinement of troublesome inmates, who were often placed there naked, without toiletries, for up to 30 days on a diet of bread and water with one full meal every fifth day. Medical facilities were characterized as a modern equivalent of a medieval pest house. A statewide review by Illinois penologist Joseph E. Ragen, expressed alarm at the overcrowding and disciplinary practices at GSP and recommended specific changes. However, administrators, guards, and inmates alike resisted reforms (Chilton, 1991). Violence erupted and escalated continuously for four years, the prison was frequently locked down and re-segregated at one point by court order (Carroll, 1998).

On September 29, 1972, Arthur S. Guthrie, Joseph Coggins II, and fifty other black inmates of GSP signed a four-page *in forma pauperis* (no fees

required) complaint to federal courts that led to the most detailed and comprehensive set of remedial decrees ever imposed on a single prison facility (Chilton, 1991). The complaint listed facts of deplorable prison conditions and practices. These included housing conditions, food and its distribution, prison discipline and punishment, visitation privileges, inmate mail and literature, staff training and qualifications, lack of treatment programs, unresponsiveness to and reprisals for voiced grievances, and racial discrimination. Violations of various constitutional amendments were also claimed, including cruel and unusual punishment [Eighth], right to privacy [Ninth], due process of law [Fifth and Fourteenth], racial discrimination [Fourteenth], right to counsel [Sixth], right to association [First], freedom of speech [First], and the right of human beings to be treated with dignity and decency [Ninth and Fourteenth] (Chilton, 1991).

In 1978, public outrage after a correctional officer was killed in a disturbance moved Governor George Busbee to release over a \$1 million from his emergency fund for immediate improvements, Governor Busbee's actions were in response to the violence, not the court (Carroll, 1998). From 1978 to 1985, at least 61 non-procedural orders and consent decrees were handed down to remedy the conditions at GSP. Judge Anthony A. Alaimo of the U.S. District Court for the Southern District of Georgia became the change agent and orchestrated changes in prison sanitation, food preparation, temperature control, fire control, industries, and ventilation. He also mandated inmate classification, racial desegregation, overcrowding restrictions, security segregation, disciplinary procedures, grievance procedures, religious freedoms, security, safety, visitation

privileges, law library access, exercise privileges, rehabilitation, educational programs, and medical, dental, and mental health programs (Chilton, 1991). Aptly stated, "in institutional reform litigation the parties do not seek damages, but equitable remedies that will re-structure the governmental institution at fault by affirmative injunction requiring positive action" (Chilton, 1991).

Martarella v. Kelley (1972) and *Shaw v. San Francisco* (1990) highlight the challenge to unconstitutional conditions and practices within juvenile detention centers, and the subsequent injunctive relief provided through judicial intervention. *Martarella v. Kelley* (1972) involved New York City detention centers in the early 1970s. The facilities involved in the case were Manida, Zerega, and Spofford. Federal District Court Judge Morris Lasker found the conditions in the Manida facility to be unconstitutional; the conditions in Spofford to be constitutionally adequate, although he ordered numerous changes; and the Zerega facility was closed by the time of the judge's initial order.

The plaintiffs alleged violation of children's constitutional rights concerning restraints, discipline, treatment, staff numbers, staff training, mixing of status offenders and delinquents, and the physical conditions of the facilities. The court set standards for, among other things, the education of case workers and counselors, training for recreational workers, in-service training for staff, access to information about the child adequate enough to look after the child's interests, schooling, access to a psychiatrist, protection against suicide, individualized treatment plans, assignment to an appropriate living unit, staff/child ratios, case

conferences, appropriate files, and most significantly, the appointment of an independent Ombudsman (Dale, 1998).

Shaw v. San Francisco (1990) challenged various illegal policies, practices and conditions of confinement at the San Francisco Juvenile Hall (Youth Guidance Center), including an antiquated facility in need of substantial repair and maintenance, fire safety, inadequate staffing and training, disciplinary and grievance procedures, and the failure to provide clean clothes, adequate general or special educational services, recreation and programs and activities. These substandard conditions were confirmed by the U.S. Department of Justice inspections and by independent audits; consequently, a taxpayer lawsuit was filed in 1990 by the Youth Law Center with assistance from Landels, Ripley & Diamond (Youth Law Center).

This case was settled by consent order⁵ on October 4 1993. A detailed agreement required an overall physical plant maintenance program relating to various items including bathroom cleanliness, sanitary food, extra blankets, workable plumbing and ventilation, fire safety, appropriate education including special education, outdoor recreation, programming, a disciplinary system, staff training including use of force, prohibition against use of restraints except handcuffs, and visitation (Dale, 1998).

While the impact of court-ordered reforms on prison conditions and practices has varied considerably, overall intervention has been a qualified success (Carroll, 1998). Susan Sturm, Associate Professor of Law at the University of Pennsylvania Law School concludes that courts have had a

⁵ A consent order is an agreement of litigating parties that by consent takes the form of a court order.

significant and positive, though limited impact on correctional institutions. According to Professor Sturm (1993), "there is little doubt that litigation has profoundly changed the conditions and practices in correctional institutions. The most far-reaching and significant effects of litigation have been on the structure, organization, and relationship of corrections to the larger community." She asserts that the courts serve as reluctant but active participants in the task of policing and reforming the nation's correctional institutions (Sturm, 1993).

CHAPTER 2: METHODOLOGY

A survey was developed in an effort to garner the opinions and/or perceptions of juvenile detention administrators regarding court decisions with an emphasis on how the threat or fear of civil liability impacts their policies, practices and procedures. Survey research is a frequently used mode of observation in the social sciences and is probably the best method available to the social researcher interested in collecting original data (Babbie, 2004).

Within the field of juvenile justice, there is a lack of research that examines the issue of civil liability and its implications for the shaping and/or re-shaping of policies that govern juvenile detention facilities. Studies have typically evolved around the cause-and-effect relationship between juveniles and delinquency. Therefore, given the unique nature of this study, a qualitative approach using a survey instrument is appropriate. The distinction between quantitative and qualitative methods involves more than just the type of data collected. Quantitative methods are most often used when the motives for research are explanation, description, or evaluation. Exploration⁶ is the most common motive for using qualitative methods (Bachman & Schult, 2003). According to Leedy and Ormrod (2001), "when little information exists on a topic, when variables are unknown, when a relevant theory base is inadequate or missing, a qualitative study can help define what is important, that is, what needs to be studied."

⁶ Exploratory research suggests that little is known about a subject, and therefore the task is to "do some digging," "delve into" and "investigate." Exploratory research may be utilized to gauge how other jurisdictions handle certain problems within their criminal justice agencies ... [it] also enables the researcher to learn more about a specific phenomenon with the desired result of applying what is learned to larger issues of policy and practice (Bayens & Roberson, 2000).

In order to preserve anonymity and secure maximum participation, the survey will be distributed electronically to approximately 100 juvenile detention administrators across the United States. The detention facilities receiving the survey will be randomly selected from the *National Juvenile Detention Directory 2003-2005*, a publication of the American Correctional Association.

In an effort to add to the credibility of the study, the consent form preceding the survey was written by the Director of Strategic & Effective Practices of the National Partnership for Juvenile Services Center for Research & Professional and Development, Michigan State University and former Director of the Bureau of Juvenile Justice for the State of Michigan. The survey, which seeks to divert attention from line staff to administrators and policy-makers comprises of 15 open-ended questions, allowing the respondents the convenience and freedom to express divergent views and to elaborate on their responses. For the qualitative researcher, open-ended questions focus on subjective meanings, definitions and description (Neuman & Wiegand, 2000); thus, providing in-depth information enabling greater analysis.

Singleton, Jr. and Straits (2005) state that the greatest advantage of the open-ended or *free-response* question is the freedom the respondent has in answering. The resulting material may be a veritable gold mine of information, revealing respondents' logic or thought processes, the amount of information they possess, and the strength of their opinions or feelings. The authors enumerate problems relating to open-ended questions, such as, the varying length of responses (some people are unbelievably verbose; others, exceedingly

reticent); the difficulty with inarticulate or semi-literate respondents; the difficulty interviewers have in getting it all down accurately; and the reluctance of many persons to reveal detailed information or socially unacceptable opinions or behavior. They conclude by saying that open-ended questions also entail more work, not only for the researcher but also for the respondent.

According to Bayens and Roberson (2000), it is not unusual to receive a low return on a survey, since completing surveys is not high on peoples' priority list. A fact compounded by the perception that filling out surveys is a bothersome chore. Also, there may be a perception on the part of the respondent that there is no value in providing the requested information (Bayens & Roberson, 2000). Each type of survey method has inherent strengths and weaknesses. The electronic survey used for this study is inexpensive; offers privacy and anonymity; interviewer bias is limited, and data are easier to summarize. Possible weaknesses include, a low response rate; open-ended questions may be unfeasible; validity of responses; and the lack of control over who actually completes the survey (Bayens & Roberson, 2000).

The survey questions for my study are designed to reveal what, if any, mechanisms are in place to assist detention administrators in implementing and/or shaping the policies, practices, and procedures at their facilities relating to civil liability. Questions such as *"Has your facility adopted/adjusted policies/procedures regarding the care and supervision of the juveniles in custody to minimize the risk of civil liability litigation"* or *"Have any specific law suits/jury awards either directed at your facility or at another facility, affected the*

development of your policies/procedures,” are specific and directed to the administrator and the facility he/she represents. Consequently, what may be interpreted as a precarious position, administrators may be wary to respond or may respond by describing their perceptions rather than a firm factual grasp of how policies are actually developed. Coupled with this is the fact that juvenile detention facilities are often closely tied to local juvenile courts, and therefore responses may reflect fears concerning the local judge’s reaction and/or action.

CHAPTER 3: RESULTS

Survey Instrument

The survey was electronically distributed to 180 juvenile detention administrators. Administrators were informed that their participation was voluntary, and that they may choose not to participate, decline to answer, or discontinue their participation at any time. They were also assured that none of the questions in the survey sought to identify individual administrators or institutions. Sixty-five (36%) of the total number of surveys were returned as *undeliverable*. A total of 15 surveys were completed, yielding a response rate of 8%. The use of different response categories posed no problems for this study because only descriptive statistics were presented. The data from the survey questions were analyzed using percentage frequencies.

Research Questions

The fundamental questions in this study examined what specific lawsuits/jury awards have affected the development of policies and procedures in juvenile detention facilities, what policies have been adopted or adjusted to minimize the risk of civil liability litigation, whether the facility has ever been involved in litigation that initiated change in the facility's policies and procedures, who is responsible for creating the policies and procedures, and how staff members are educated about new court decisions/legislation and/or other legal developments that affect their policies and procedures.

The staff member completing the survey indicated that the Director, Superintendent or Department Head, with input from staff and/or county/civil

generalizable district attorneys were responsible for creating the policies and procedures that govern the detention facility. Other facilities follow state statutes, the American Correctional Association (ACA), and state licensing standards. Approximately 7% of the respondents indicated that the Department Head had a law degree; 38% stated that their policies and procedures are reviewed by, or created in collaboration with a civil district attorney; compliance officer; staff attorney or assistant attorney general; the remaining 55% stated that experience, education, and on-the-job training qualified individuals for the task of creating their facility's policies and procedures. Responses included, "previous 25 years with Juvenile/Family Court as a probation officer and back-up Referee;" Master of Public Administration, law courses and seminars;" "worked on Louisiana Children's Code;" "27 years of law enforcement, numerous courses, including American Correctional Association courses on juveniles;" and "workshop type training on developing policies and procedures."

Thirty-eight percent of the respondents listed U.S. Supreme Court and/or other federal, state/local court decisions, as having an effect on specific policies and procedures at their facility. For example, strip search procedures and mental health issues; juveniles separated based on type of court (juvenile/district/federal/circuit court); the Juvenile Justice Delinquency Prevention Act (1974); Prison Rape Elimination Act (2003); and sight/sound separation, case law on suicide, as well as inspections by governmental entities; 23% broadly stated that "all policies reflect all court decision" and "all policies are designed to be in compliance with

all applicable laws regarding the confinement of juveniles;" while 39% stated that court decisions have not affected their policies and procedures.

In terms of how staff members are educated about existing court decisions/legislation and other legal rules that affect the policies and procedures for detention, approximately 79% of the respondents indicated that this is done via *specialized* training and staff meetings; 14% indicated that their policies and procedures "reflect law;" and 7% stated that "we don't do this routinely." Similarly, 79% of the respondents stated that staff members learn about civil lawsuits filed against, or jury awards imposed on detention facilities, via journals; professional publications; magazines; training; staff meeting; and the internet; with 21% stating that "there is no formal system" or "[is] not routinely done."

With specific reference to the issue of civil liability, 43% of the administrators stated that there were no specific lawsuits/jury awards that affected the development of their policies; 36% indicated that a lawsuit either directed at their facility or a "neighboring state" assisted in re-shaping their policies and procedures; 14% generalized by stating "globally lawsuits may change standards and heighten awareness for policy revisions" or "everything is done with this in mind – best practices;" and 7% of the administrators indicated that their policy manual was rewritten using the ACA standards. Fifty percent of the administrators listed policies and procedures that their facilities have either adopted or adjusted to minimize the risk of civil liability litigation, such as, strip search policies; security check frequency policy; physical management policies; increased documentation of all visits; and medical concerns; 7% of the

administrators indicated that they did not; while 29% stated that they follow state/federal and ACA standards - "policies are compliant with ACA standards;" and 14% gave general responses, such as "we always keep liability in mind when making or reviewing policies and procedures." When respondents were asked whether or not policies and procedures at their facility were either adopted or adjusted as a result of a court decision, 57% said no; 14% indicated that their changes reflect changes in ACA standards; and 29% listed changes in policies and procedures that included but were not limited to, cell phone use and juvenile mail. Overall, 92% of the facilities represented in the survey have never been involved in litigation that initiated change(s) in their policies and procedures.

CHAPTER 4: DISCUSSION

Findings

Due to the inadequate response rate, the results are less likely to be generalizeable to the perceptions and/or concerns of juvenile detention administrators in the United States as it relates to civil liability.

The responses fail to provide support for the hypothesis that the threat or fear of civil liability provides a greater impetus for policy change(s) than direct judicial order(s). Evident in the responses, the majority of the administrators are not persuaded that court decisions and/or lawsuits/jury awards have impacted or assisted in the development of their policies and procedures. They seem less educated, knowledgeable, and experienced in the area of civil liability, although cummatively, the respondents span approximately 217 years within juvenile justice, with the average respondent representing approximately 14 years in the field of juvenile detention.

Alarminglly, 93% of the administrators responsible for creating the policies and procedures within their facility possess no formal legal training. Additionally, the facilities represented are bereft of any type of formal mechanism whereby staff members are educated about lawsuits or civil liability litigation that may directly or indirectly affect their facility. There appears to be a greater focus or concern that policies and procedures are compatible with guidelines set forth by the ACA and/or state regulations, as opposed to a direct judge-made rule or judicial order(s). The administrators' preoccupation with ACA compatibility may result from a desire to maintain accreditation and legitimacy. The American

Correctional Association, through the Commission on Accreditation for Corrections, administers the only national accreditation program for all components of adult and juvenile corrections (ACA develops standards, the Commission evaluates institutions and awards accreditation).

More than 1,500 correctional facilities and programs are involved in accreditation, a process that began in 1978. Approximately 80% of all state departments of corrections and youth services are active participants. ACA's Standards for Juvenile Detention Facilities (3rd Edition) includes all standards that a juvenile institution must meet to gain ACA accreditation (and, many agencies that do not go through the accreditation process still informally follow ACA standards). Issues specifically relating to civil liberties are addressed through the standards.

As a legal theorist, Rosenberg questions the extent to which legal rules and the judicial system have the capacity to create social change. Rosenberg believes that courts are important political actors and policy makers, but asserts that reliance on litigation often has been counterproductive. Rosenberg's theory appears credible, courts simply provide an illusion of change and are impotent to produce significant social reform. Effective policy depends on factors external to courts or court decisions, judges cannot foster change independent of *insiders*, in this case, the administrators and staff of the juvenile detention facilities. To echo Rosenberg's refrain, "the Court by itself doesn't matter." The benefits of accreditation seemingly outweigh and provides greater incentive than a judicial

order(s) or intervention. According to Joey Weedon, Director of Government Affairs, ACA:

any facility or program that is accredited by ACA is considered to meet the recommended best practices for the operation of the facility/program. Thus, the institution is meeting the security needs of the community while also ensuring that the offender's basic civil and human rights are being upheld.

The low response rate may be attributed to administrators' close connection, deference to and control by local judges, producing reluctance to express their views. There may also be a perceived threat to the respondents because of sensitive issues associated with the research focus, prohibiting full cooperation. Further, juveniles in custody may not be aware of the constitutional rights afforded them; thus, the lack of research about civil liability.

The Supreme Court in *Bounds v. Smith* held that a prisoner who wishes to challenge conditions of confinement is entitled to access either to a lawyer or a law library; therefore, access to counsel may be constitutionally required under the Fifth Amendment. Access to an attorney or a law library is a difficult issue for children because of the likelihood that they will not seek such access. One court⁷ recognized this problem, but held that there was no constitutional right to a library for juveniles because the average child in the facility was three years behind his/her expected grade level; consequently, the library would not benefit the children and waste state funds (Dale, 1998).

⁷ See *Alexander v. Boyd*, 876 F. Supp. 773 (D.S.C. 1995)

Conclusion and Recommendations

Results of this study, while not conclusive, reveal the need for training and education among juvenile correctional staff in the area of civil liability. Department Heads charged with the responsibility of creating policies and procedures should implement mandatory training on issues relating to civil liability and its implications for staff members, as well as, monthly on-site training for detention workers in direct contact with the juveniles in custody. Training should include relevant legal updates and court decisions relating to civil liability that may directly or indirectly affect the juveniles in custody, staff and administration.

There is a definite need for continued research on civil liability as it relates to both adult and juvenile corrections. A survey conducted in a controlled environment may yield better results, that is, where the researcher is allowed to physically distribute and collect the surveys from individual detention administrators. The researcher should run a pilot or *pre-test* for readability and functionality, to ensure that the participants have a clear understanding of the questions asked and information sought. With the pre-test, the researcher administers the survey to a small group of subjects (corrections staff) who then critique the instrument, paying close attention to the wording and organization of the questionnaire (Bayes & Roberson, 2000).

Upon completion, the pre-test subjects provide suggested changes to improve the questionnaire both in content and appearance. After the pre-test, the questionnaire can be revised based upon the comments of the subjects, and

administered to the sample population. The results from the pre-test should not be included with the final results (Bayes & Roberson, 2000). Additionally, rather than open-ended questions, the researcher may opt for closed-ended questions. Closed-ended questions are easier on the respondent because they require less effort and less facility with words. The presence of response options also enhances standardization by creating the same frame of reference for all respondents. With closed-ended questions, for which specific response options are provided, the researcher will more likely be able to elicit a fuller, more complete response than will a questionnaire requiring respondents to write out answers. This is particularly true with respondents whose writing skills are weak or who are less motivated to make the effort to respond fully (Singleton & Straits, 2005).

Concern for job-related civil liability can have both positive and negative consequences. The positive consequences of a system of civil liability include providing compensation to victims, deterring misbehavior, acting as a catalyst for needed policy and practice changes, identifying employees who need training or who should be disciplined, and enhancing the legitimacy of the criminal justice system by demonstrating that misbehavior is not tolerated (Lambert, Hall and Ventura (2003).

On the other side, if the fear of liability rises too high, employees may become apprehensive to perform their duties. In addition to fostering inefficiency, this situation poses risks to both citizens and employees. Because criminal justice function necessarily involve deprivations of liberty and threats to

lives, a civil liability system that is too broadly constructed could threaten to bankrupt public agencies. The challenge is to develop a system that adequately deters misconduct, promotes the development of sound policies, is perceived as legitimate by citizens, does not paralyze public employees from acting, and does not pose a risk of creating a fiscal crisis (Lambert, Hall & Ventura, 2003).

APPENDIX A

The Impact of Litigation on Juvenile Detention Facilities

None of the questions in this survey seek to identify individual administrators or institutions. Your responses will be combined with responses from other surveys in the analysis of this study. In order to enhance the anonymity of respondents, please do not place your name, the name of your institution, or the name of your state on the form. Thank you for your generous cooperation and assistance.

1. Job title of person completing survey: _____
2. How long have you worked at this facility: _____
3. How long have you worked in the field of juvenile detention: _____
4. (a) Type of facility:
Secure detention ☐ Capacity: _____
Non-Secure detention ☐ Capacity: _____

(b) State-owned facility ☐
Private-owned facility ☐
5. Who is responsible for creating policies and procedures regarding the care and supervision of the juveniles in custody?

6. What, if any, type of legal training does this individual possess?

7. Have U.S. Supreme Court and/or other federal, state or local court decisions affected the policies and procedures of your facility?

Yes ☐

No ☐

If yes, please specify:

8. Are there any specific federal or state laws that have shaped the policies and procedures at your facility?

Yes ☐

No ☐

If yes, please specify:

9. How are staff members educated about existing court decisions, legislation, or other legal rules that affect policies and procedures for juvenile detention?

10. How do staff members learn about new court decisions, legislation, or other legal developments that affect policies and procedures for juvenile detention?

11. How do staff members learn about civil lawsuits filed against or jury awards imposed on juvenile detention facilities and staff elsewhere in the state or country?

12. Have any specific lawsuits or jury awards, either directed at your facility or at another facility, affected the development of your policies and procedures?

Yes ☐

No ☐

If yes, please specify:

13. Has your facility adopted or adjusted policies and procedures regarding the care and supervision of the juveniles in custody to minimize the risk of civil liability litigation?

Yes ☐

No ☐

If yes, please specify:

14. Has your facility adopted or adjusted policies and procedures regarding the care and supervision of the juveniles in custody as a result of a court decision?

Yes ☐

No ☐

If yes, please state the reasons for those changes:

15. Has your facility ever been involved in litigation concerning the care and supervision of the juveniles in custody that has initiated change in your facility's policies and procedures?

Yes ☐

No ☐

If yes, please specify:

http://www.cj.msu.edu/detention_facilities_survey.htm

Bibliography

- Babbie, E. (2004). *The Practice of Social Research* (10th ed.). Belmont, CA: Wadsworth/Thomson Learning.
- Bachman, R., & Schutt, R.K. (2003). *The Practice of Research in Criminology and Criminal Justice* (2nd ed.). Thousand Oaks, CA: Pine Forge Press.
- Barrineau III, H.E. (1994). *Civil Liability in Criminal Justice* (2nd ed.). Cincinnati, OH: Anderson Publishing Company.
- Bayens, G.J., & Roberson, C. (2000). *Criminal Justice Research Methods: Theory and Practice*. Incline Village, NV: Copperhouse Publishing Company.
- Carroll, L. (1998). *Lawful Order: A Case Study of Correctional Crisis and Reform*. New York: Garland Publishing, Inc.
- Chilton, B.S. (1991). *Prisons under the Gavel: The Federal Court Takeover of Georgia Prisons*. Columbus, OH: Ohio State University Press.
- Clear, T.R., & Cole, G.F. (1997). *American Corrections* (4th ed.). Belmont, CA: Wadsworth Publishing Company.
- Crouch, B.M., Marquart, J.W. (1989). *An Appeal to Justice: Litigated Reform of Texas Prisons*. Austin, TX: University of Texas Press.
- Dale, M.J. (1998). Lawsuits and Public Policy: The Role of Litigation in Correcting Conditions in Juvenile Detention Centers. *University of San Francisco Law Review*, 32 U.S.F.L. Rev. 675 (LEXIS).
- Dilulio, J.J. (1990). Conclusion: What Judges Can Do to Improve Prisons and Jails. In John J. Dilulio (Ed.), *Courts, Corrections, and the Constitution* (pp. 287-320). New York, NY: Oxford University Press.
- Ekland-Olson, S., & Martin, S.J. (1990). *Ruiz: A Struggle over Legitimacy*. In J.J. Dilulio (Ed.), *Courts, Corrections, and the Constitution* (pp. 73-93). New York, NY: Oxford University Press.
- Goodstein, L., & MacKenzie, D.L. (1989). Introduction: Issues in Correctional Research and Policy. In L. Goodstein and D.L. MacKenzie (Eds.), *The American Prison: Issues in Research and Policy* (pp.1-10).
- Hopper, C.B. (1985). The Impact of Litigation on Mississippi's Prison System. *The Prison Journal*, LXV (1), 54-63.

- Jacobs, J. (1977). *Stateville: The Penitentiary in Mass Society*. Chicago: University of Chicago Press.
- Judicial Intervention and Organization Theory: Changing Bureaucratic Behavior and Policy. *Yale Law Journal*, 89, 513-537.
- Lambert, E.G., Hall, D.E., & Ventura, L. (2003). Litigation Views among Jail Staff: An Exploratory and Descriptive Study. *Criminal Justice Review*, 28 (1), 70-87.
- Mays, G.L., & Taggart, W.A. (1985). The Impact of Litigation on Changing New Mexico Prison Conditions. *The Prison Journal*, LXV (1), 38-53.
- Neuman, W.L., & Wiegand, B. (2000). *Criminal Justice Research Methods: Qualitative & Quantitative Approaches*. Needham Heights, MA: Allyn & Bacon.
- Rhodes, S.L. (1992). Prison Reform and Prison Life: Four Books on the Process of Court-ordered Change. *Law & Society review*, 26 (1), 189-218.
- Rosenberg, G.N. (1991) *The Hollow Hope: Can Courts Bring About Social Change?* Chicago: University of Chicago Press.
- Ross, M.M. (1998). *Sword and Shield Revisited: A Practical Approach to Section 1983*. Chicago: State and Local Government Law Section, American Bar Association.
- Singleton, R.A., & Straits, B.C. (2005). *Approaches to Social Research* (4th ed.). New York, NY: Oxford University Press.
- Smith, C.E., & Hurst, J. (1997). The Forms of Judicial Policymaking: Civil Liability and Criminal Justice Policy. *Law & Social Inquiry*, 19 (3), 341-354.
- Sturm, S.P. (1993). The Legacy and Future of Corrections Litigation. *University of Pennsylvania Law Review*, 142 U. Pa. L. Rev. 639 (LEXIS).
- Yackle, L.W. (1989). *Reform and Regret: The Story of Federal Judicial Involvement in the Alabama Prison System*. New York, NY: Oxford University Press.
- Youth Law Center (n.d.). Retrieved January 15, 2005, from <http://www.ylc.org>.

MICHIGAN STATE UNIVERSITY LIBRARIES



3 1293 02736 3559