LGIT'S COMMANDER'S LOG
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DETENTION CENTER WARDENS SHOULD FREQUENTLY REVIEW STRIP SEARCH POLICIES TO ENSURE THAT THEY MEET CONSTITUTIONAL REQUIREMENTS

QUESTION: Can a warden be subject to liability under 42 U.S.C. § 1983 if he or she has actual or constructive knowledge that a detention center's strip search policies violate the Constitution?

ANSWER: Yes. A warden's high level of responsibility makes him or her responsible for the implementation of adequate management systems and practices to assure performance and accountability in the facility. This responsibility includes oversight of training, supervising, disciplining, and formulating and implementing policy.

CASE: ***Jones v. Murphy***
United States District Court for the District of Maryland,
Decided January 4, 2007

In a recent class action suit in our United States District Court, a number of male and female pretrial detainees at the Baltimore City Central Booking and Intake Center ("CBIC") sued Baltimore City, the City Police Department, and current and former wardens of the CBIC under 42 U.S.C. § 1983. The inmates alleged, in part, that the strip search policies in place at the CBIC violated their constitutional rights. Specifically, they alleged that they had been subjected to: "suspicionless" strip searches; non-private strip searches; strip searches of male detainees while female inmates were not; and underwear strip searches of male detainees while female inmates were not. The current and former wardens moved to dismiss the complaint, arguing that it failed to state any valid legal claims against them. The Court, however, denied their motions and allowed the case to proceed.

The Court pointed to a number of reasons for denying the wardens' motions. First, the Court explained that the right of those arrested for offenses not likely to involve weapons or contraband to be free from strip searches without any individualized finding of reasonable suspicion is clearly established. It also seemed clear to the Court that it was not objectively reasonable for the wardens to believe that a *blanket* strip search policy was lawful, especially when their position of authority is considered. Second, the Court said that being strip searched in a non-private setting violates what appears to be a clearly established right in the Fourth Circuit, and, consequently, it was not reasonable for the wardens to believe otherwise. Third, the right of males to be free from being strip searched (either fully or down to their underwear) while similarly situated females were not, appeared to the Court to be a violation of a clearly established right. In other words, the Court concluded that a policy of allowing the strip

searching of one gender but not the other was unconstitutional. Accordingly, a blanket strip search policy under which all female arrestees, but not all male arrestees, were strip searched, regardless of the offenses with which they were charged or any individualized suspicion that they were concealing contraband, was unconstitutional. Any similar blanket policy allowing only males detainees to be strip searched would also be subject to constitutional challenge. For all of these reasons, the Court allowed the case to proceed.

NOTE: The *Jones* case highlights the importance of frequently reviewing *all* policies and procedures governing conduct in a detention center, especially those governing searches and seizures of individual detainees. A warden or other supervisory official may be found liable for implementing unconstitutional policies or practices if he or she has actual or constructive knowledge that subordinates are engaged in conduct that poses a risk of constitutional injury; that the warden's response was so inadequate as to show "deliberate indifference" to the practices; and that there was an "affirmative causal link" between the warden's inaction and the injury suffered by the detainee.

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