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RECENT TRENDS IN THE CRIMINAL LAW

PRISONERS' RIGHTS

Prison officials may face a greater possibility of liability for violations of prisoners' civil rights if future decisions follow *Knell v. Bensinger*.[1] In this recent opinion the Seventh Circuit Court of Appeals, adding an alternative objective standard to its traditional subjective good faith test for liability, adopted a standard previously established by the Supreme Court to evaluate the acts of school officials.[2]

While the plaintiff Knell was serving an eight-year sentence for armed robbery he was placed in disciplinary isolation for a fifteen-day period.[3] After his release from isolation Knell appeared before an institutional merit staff committee which revoked three months of his accumulated statutory good time. While in isolation Knell had requested legal materials, a typewriter, and consultation with an inmate "jailhouse lawyer." Prison officials denied plaintiff's requests pursuant to a then applicable prison regulation. In 1972 the plaintiff filed a complaint in the United States District Court for the Northern District of Illinois pursuant to 42 U.S.C. § 1983[4] alleging a denial of access to the courts while in isolation and a denial of procedural due process in prison committee hearings.[5]

The defendants[6] were found to be free from liability even though the new, more stringent test was applied.[7] The appellate court quoted from *Wood v. Strickland* in applying the following standard:

> [I]n the specific context of school discipline, we hold that a school board member is not immune from liability for damages under §1983 *if he knew or reasonably should have known* that the action he took within his sphere of official responsibility would violate the constitutional rights of the student affected, or if he took the action with the malicious intention to cause a deprivation of constitutional rights or other injury to the student.[8]

The above standard requires an objective examination of a prison official's acts; whether the prison official reasonably *should have known* his acts would violate the prisoner's rights is questioned as well as whether he *did* know this. If it is determined by the court that an official should have known his acts would violate the prisoner's established rights, then it is likely that he will be held liable for resulting damages notwithstanding the fact that his intent was not malicious and that he subjectively acted in good faith.[9]

Although the court in *Knell* acknowledged that the Supreme Court's test in *Wood* was expressly limited to the area of school discipline it applied the test to the official conduct of correctional facility administrators for two reasons. First, the court noted that the

[1] 522 F.2d 720 (7th Cir. 1975).

[2] Wood v. Strickland, 420 U.S. 308 (1975).

[3] Knell had been placed in disciplinary isolation for writing a letter to an unauthorized person and smuggling the letter out of the prison.

[4] Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States . . . 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.

42 U.S.C. § 1983 (1970).

[5] The plaintiff filed two complaints which were consolidated upon appeal. The first complaint, referred to above, requested injunctive relief and monetary damages. The second complaint, filed almost five months later, contested the plaintiff's loss of statutory good time and reduction in status.

[6] The sole defendant at the time of appeal was Peter B. Bensinger who was Director of the Illinois Department of Corrections when the plaintiff's complaint was filed.

[7] The lower court had granted the defendant's motion for summary judgment in the first action; the second action was dismissed for failure to state a claim upon which relief could be granted. The plaintiff then appealed both cases which were consolidated. The Seventh Circuit Court of Appeals vacated the district court's judgment because the plaintiff's isolation created an effective denial of access to the courts to challenge that isolation. The case was remanded to determine whether the plaintiff could prove resultant damages. *See* Knell v. Bensinger, 489 F.2d 1014 (7th Cir. 1973). On remand Senior District Judge Perry entered judgment for the defendants and dismissed the case on the merits. 380 F. Supp. 494 (N.D. Ill. 1974).

[8] Knell v. Bensinger, 522 F.2d at 724 (emphasis added), *quoting* Wood v. Strickland, 420 U.S. at 321–22.

[9] The Supreme Court in *Wood* did not explicitly define good faith. In looking to precedent for guidance the Court found that

> there is general agreement on the existence of a "good faith" immunity, but the courts have either emphasized different factors as elements of good faith or have not given specific content to the good-faith standard.

420 U.S. at 315.

Supreme Court had remanded cases involving the personal liability of non-school officials for reconsideration in the light of *Wood,* thereby indicating that this standard was not to be applied exclusively to school officials.[10] Second, the basis for the Supreme Court decision in *Wood* was the refusal to permit mere ignorance of settled law to justify a denial of a student's constitutional rights by school administrators. The court in *Knell* also defined liability so as to include such a situation. According to Chief Judge Fairchild, the addition of this requirement was to assure that officials respect the constitutional rights of prisoners despite the need for discretion in prison administration.[11]

In applying the subjective half of this two-part test to the treatment of Knell the court found no evidence in the record disclosing subjective bad faith.[12] The application of the objective half of the test required an examination of the relevant law at the time the plaintiff was placed in isolation.[13] At that time there was a well established principle that the state could not absolutely deny prisoners access to court to challenge their confinement.[14] Notwithstanding this settled legal principle, the court, in considering Knell's fifteen-day confinement, held that the temporary denial of access was reasonable considering the state of the law and traditional judicial hesitancy to interfere with internal prison administration when no grievous interference with defendant's constitutional rights was involved.[15]

The *Wood* standard with its objective components represents an extension of earlier Supreme Court opinions construing personal liability of government officials under section 1983. In *Pierson v. Ray*[16]

[10] Gumanis v. Donaldson, 422 U.S. 1052 (1975); O'Connor v. Donaldson, 422 U.S. 563 (1975). In both of these cases the Supreme Court vacated the appellate court decisions and remanded the cases for consideration in light of *Wood v. Strickland.* On remand, the issue was whether the failure of the district judge to instruct with regard to the effect of the defendant mental hospital superintendent's claimed reliance on state law rendered inadequate the trial judge's instruction as to the defendant's freedom from liability if he acted reasonably and in good faith.

The Court in *Knell* also noted the adoption of this standard about six months earlier in a case concerned with liability of police. Glasson v. Louisville, 518 F.2d 899 (6th Cir. 1975). In this case police officers destroyed the protest sign plaintiff was holding at a peaceful gathering along a Presidential motorcade route because they determined it would be detrimental to President Nixon. Violations of the plaintiff's first and fourteenth amendment rights were alleged; the Sixth Circuit held the defendants liable under the *Wood v. Strickland* test. The court discarded the traditional test because "to hold that a police officer is exonerated from liability if he merely acts in subjective good faith might foster ignorance of the law or, at least, encourage feigned ignorance of the law." 518 F.2d at 909–10. Though the court warned against second-guessing police officers when they are involved in potentially explosive situations, substantial evidence in the case pointed to a knowing and callous disregard of the plaintiff's rights. The obvious violation of rights approaching bad faith in *Glasson* was not sufficiently similar to the questionable denial of court access in *Knell* to prohibit the Seventh Circuit from citing *Glasson* as precedent for application of the *Wood* standard.

[11] In reviewing acts of prison officials courts often defer to the need for such officials to be vested with substantial discretion in prison administration and discipline so that they may cope with diverse situations without fear of judicial second-guessing. *See, e.g.,* Wolff v. McDonnell, 418 U.S. 539 (1974) (certain prison discipline and procedural matters were to be left to the sound discretion of state prison officials); LaBatt v. Twomey, 513 F.2d 641 (7th Cir. 1975) (in an emergency, prison officials, reacting in good faith, must not be unduly hindered by overbroad federal judicial scrutiny of the factual basis underlying their decisions); Hoitt v. Vitek, 497 F.2d 598 (1st Cir. 1974) (held not within the court's province to second-guess the judgment of correction officers by deciding later whether a lockup was justified); Walker v. Pate, 356 F.2d 502 (7th Cir. 1966) (where prisoner was not permitted to keep law books nor receive visits by his family, held that except under exceptional circumstances federal courts will not review internal prison regulations); United States *ex rel.* Lawrence v. Ragen, 323 F.2d 410 (7th Cir. 1963) (held that state prison officials must of necessity be vested with wide discretion in determining the nature and type of medical treatment for state prisoners).

[12] 522 F.2d at 725.

[13] The requirement of examining a defendant's acts in the context of the state of the law at the time the actions occurred is well established. *See, e.g.,* Black v. Brown, 513 F.2d 652, 654 n.6 (7th Cir. 1975); Hoitt v. Vitek, 497 F.2d 598, 602 (1st Cir. 1974); Haines v. Kerner, 492 F.2d 937 (7th Cir. 1974); United States *ex rel.* Bracey v. Rundle, 368 F. Supp. 1186 (E.D. Pa. 1973); Landman v. Royster, 354 F. Supp. 1302, 1317 (E.D. Va. 1973).

[14] *See, e.g., Ex parte* Hull, 312 U.S. 546 (1941); *cf.* Hatfield v. Bailleaux, 290 F.2d 632 (9th Cir. 1961) (inmate's right to reasonable access to courts was not infringed upon by prison regulations which limited times and places for legal research and restricted communications to and from attorneys while confined in isolation).

[15] Concerning this judicial hesitancy to interfere with prison administration see note 10 *supra* and cases cited therein. It is possible that the remnants of this policy influenced the Seventh Circuit's decision to find for the defendants. By announcing the adoption of the *Wood* standard yet finding no liability, the court may have attempted to put prison administrators on notice of the future application of this test. *See* United States *ex rel.* Miller v. Twomey, 479 F.2d 701, 719 n.38 (7th Cir. 1973).

[16] 386 U.S. 547 (1967). In this case the plaintiffs had attempted to use segregated facilities at a Mississippi interstate bus terminal when they were arrested by police for violations of the state breach-of-peace statute. The plaintiffs brought suit under section 1983 and the common law of false arrest.

the Court held that a defense of good faith and probable cause was available to law enforcement officers in a civil rights action. The Court said that if the officers believed in good faith that the arrest they made was constitutional, then a verdict for the officers would follow even though the arrest was in fact unconstitutional. The Court did not consider whether the officers' ignorance of the unconstitutionality of the arrest was itself indicative of bad faith as the *Knell* test would seem to require.

Following *Pierson* the Seventh Circuit Court of Appeals allowed prison officials to claim successfully a good faith defense in civil rights actions brought by prisoners. In *United States ex rel. Miller v. Twomey*[17] the court held *inter alia* that the due process clause required some procedural safeguards prior to punitive segregation of prisoners. Where disciplinary segregation without such procedural safeguards occurred, however, prison officials were not liable for damages where no previously established procedures existed, if they acted in good faith and performed their duties faithfully. Since *Miller* imposed a previously unannounced standard of conduct, the court said that it was inappropriate to require the officials to answer in damages. The court's decision, however, was based on *Morrissey v. Brewer*[18] in which the Supreme Court rejected the idea that since parolees remained in legal "custody" pursuant to criminal convictions, they had an insufficient interest in liberty to require a hearing prior to revocation. Although *Miller* was an extension of this holding the Seventh Circuit never considered whether prison officials should have understood *Morrissey* to require additional safeguards. If this case had arisen following *Knell* the lack of any attempt to institute or consider procedural safeguards might have been indicative of bad faith even though no malicious intent existed on the part of officials.

In *Haines v. Kerner*[19] a prison inmate was denied damages for an alleged denial of due process in disciplinary proceedings occurring in 1968 and for solitary confinement, the conditions of which allegedly constituted cruel and unusual punishment. The Seventh Circuit again followed *Pierson v. Ray* in holding that good faith was a defense when prison officials were sued for damages under section 1983. According to the court, where there was a similar prior decision in that circuit upon which officials could rely, then the officials were said to be acting in good faith. The court did not discuss whether based upon all the factors it would have been reasonable to expect them to act differently.

The Supreme Court reiterated the good faith guideline for evaluating law enforcement officers' conduct relating to an arrest in *Scheuer v. Rhodes*.[20] This was a section 1983 case against the Governor of Ohio and members of the Ohio National Guard by representatives of the estates of students killed on the campus of Kent State University. Dicta indicated that a different standards may be applicable to officers of the executive branch of government and to police. The Court said:

> It is the existence of *reasonable grounds for the belief formed at the time and in light of all the circumstances,* coupled with good-faith belief, that affords a basis for qualified immunity of executive officers for acts performed in the course of official conduct.[21]

The Court neglected to provide a method for evaluating what constituted "reasonable grounds for belief," whether the belief must have been reasonable to the individual executive in light of the information he in fact had, or whether the belief was to be examined in relation to the information that the court felt should have been known by an officer in a similar situation.

In *LaBatt v. Twomey*[22] the court made no mention of *Scheuer*, though it had been decided six months earlier. In *LaBatt* the plaintiffs, along with the entire prison population, had been constantly confined in their cells for a nine-day period following an altercation. Because there were no allegations of bad faith in the warden's determination that prison conditions required the imposition of the lockup, the court refused further review of the warden's actions. There was no mention of what would have been reasonable under the circumstances or whether the official's behavior could have been objectively unreasonable although subjectively in good faith.[23]

In conclusion, prior to *Wood* the decisive issue in reviewing an official's intentional, rather than negligent, acts was whether he acted in good faith or, more specifically, whether he acted sincerely and with a belief that his acts were legal and

[17] *See* note 15 *supra*.
[18] 408 U.S. 471 (1972).
[19] 492 F.2d 937 (7th Cir. 1974).
[20] 416 U.S. 232 (1974).
[21] *Id.* at 247–48 (dictum) (emphasis added).
[22] 513 F.2d 641 (7th Cir. 1975).
[23] For other cases prior to *Wood* allowing state prison officials a traditional good faith defense when they were not immune from liability see Black v. Brown, 513 F.2d 652 (7th Cir. 1975) and Fidtler v. Rundle, 497 F.2d 794 (3d Cir. 1974).

constitutional.[24] No specific intent to deprive the prisoner or the accused of his constitutional rights was required for liability.[25]

The Supreme Court in *Wood*, after adopting the subjective-objective standard, remanded for consideration the issue of whether two high school students had been deprived of procedural due process when they were expelled from school for violating a school regulation prohibiting the use or possession of alcoholic beverages at school activities. The District Court said that no malice or ill will by the officials toward the students, necessary for liability under section 1983, was present.[26] The Court of Appeals disagreed; it held that specific intent to harm wrongfully was not a requirement for recovery of damages.[27] The court held that the test should be objective rather than subjective.

The Supreme Court attempted to combine these two decisions to fashion a standard which would allow officials leeway in exercising discretion in disciplinary matters, yet which would not leave the rights of students wholly unprotected. In order to be immune from liability for damages under section 1983 the Court said that a school board member "must be held to a standard of conduct based not only on permissible intentions, but also on knowledge of the basic, unquestioned constitutional rights of his charges."[28] A board member's nonmalicious ignorance of the rights of his students at the time of the event will not save him from liability under the *Wood* standard.[29]

Following the Supreme Court's decision in *Wood* the Fourth Circuit Court of Appeals approved the use of this subjective-objective standard to evaluate the acts of prison officials. In an addendum to the opinion in *McCray v. Burrell*[30] the court quoted *Wood* and, without discussion, found that standard consistent with the evaluation of liability in the body of the *McCray* opinion. Where an inmate alleged *inter alia* that his confinement in the prison mental observation cell constituted cruel and unusual punishment the court remanded the case for a determination of whether the prison guard who placed him there was liable for damages.[31]

The pre-*Wood* standard first used by the *McCray* court to determine liability required a prison guard to act in reliance on a good faith belief that his acts were constitutionally permissible. This belief rendered him immune from damages even if it were later established that his belief was ill-founded. It

[24] *See generally, e.g.*, Wood v. Strickland, 420 U.S. 308 (1975); Scheuer v. Rhodes, 416 U.S. 232 (1974); Bell v. Wolff, 496 F.2d 1252 (8th Cir. 1974) (no liability where warden, who allegedly compelled a pretrial detainee to work, had a good faith belief that the plaintiff wanted to work rather than remain idle); Gaffney v. Silk, 488 F.2d 1248 (1st Cir. 1973) (town selectmen not liable for terminating disability payments to former policemen when their actions were in good faith and they did not subjectively realize that they would deprive plaintiffs of federal rights); Skinner v. Spellman, 480 F.2d 539 (4th Cir. 1973) (in prison disciplinary proceeding official not liable for damages if he acted in reasonable good faith reliance on what was standard operating procedure in the Virginia prisons); United States *ex rel.* Miller v. Twomey, 479 F.2d 701, 719 n.38 (7th Cir. 1973); Joseph v. Rowlen, 402 F.2d 367 (7th Cir. 1968) (police officer who acted in good faith and with probable cause in making arrest under statute he believed to be valid was not liable for deprivation of arrestee's civil rights although the statute was later held invalid); Preston v. Cowan, 369 F. Supp. 14 (W.D. Ky. 1973) (where defendant blocked mailing of plaintiff's motions to Supreme Court he had to prove that he believed that his conduct was constitutionally permissible in order to escape liability).

[25] *See, e.g.*, Hoitt v. Vitek, 497 F.2d 598, 602 n.4 (1st Cir. 1974) (a viable complaint challenging a post-emergency lockup need not contain an allegation of specific intent); Dowsey v. Wilkins, 467 F.2d 1022 (5th Cir. 1972) (where plaintiff was repeatedly threatened and questioned by police it was not necessary for him to show malice or ill will to recover); Jenkins v. Averett, 424 F.2d 1228 (4th Cir. 1970), *noted in* 23 VAND. L. REV. 1341 (1970) (gross or culpable negligence created liability); Whirl v. Kern, 407 F.2d 789 (5th Cir. 1969) (ignorance of sheriff who unlawfully detained plaintiff in jail created liability for damages); *cf.* Jenkins v. Meyers, 338 F. Supp. 383 (N.D. Ill. 1972), *aff'd without published opinion*, 481 F.2d 1406 (7th Cir. 1973) (where prison officials failed to mail a trial transcript to the plaintiff's attorney, court held that while specific intent to deprive the plaintiff of a federal right was not essential to a finding of liability, the act leading to the deprivation must have been an intentional rather than a negligent one). *But cf.* Howell v. Cataldi, 464 F.2d 272 (3d Cir. 1972) (to hold defendants liable court said plaintiff must prove at least the condition usually demanded in a tort action, which is existence of either wrongful intention or culpable negligence).

[26] 348 F. Supp. 244 (W.D. Ark. 1972).

[27] 485 F.2d 186 (8th Cir. 1973).

[28] 420 U.S. at 322.

[29] Justice Powell, joined by three other Justices in his dissent, objected to the adoption of harsher standard than that previously used because it appeared to rest on an "unwarranted assumption" as to what law officials know, or can know, about legal and constitutional rights. 420 U.S. at 328–29 (Powell, J., dissenting).

[30] 516 F.2d 357, 372 (4th Cir. 1975).

[31] Questions to be considered on remand included whether the defendant had a continuing duty toward the plaintiff after placing him in the mental observation cell; whether there was a duty to the plaintiff to take further action when the psychiatrist failed to respond to the prison's calls; and whether there were other, more humane facilities to which the plaintiff could have been transferred when the psychiatrist failed to respond. *Id.* at 371.

would seem necessary, before proclaiming these standards consistent, to compare the requirement of a good faith belief with *Wood*'s denial of immunity if the official should have known that his acts would violate the constitutional rights of the affected individual. It is possible that these two standards are not compatible; the former may only require an examination of the individual's reasons for his belief and action while the latter looks to an external standard for guidance as to what the official should have known and done. Though the Fourth Circuit's adoption of *Wood* in the addendum to *McCray* is probably indicative of the future application of this standard, a conflict with the earlier, supposedly consistent standard of liability used in the main part of the *McCray* opinion may exist. This leaves the Seventh Circuit in *Knell v. Bensinger* as the only circuit court clearly embracing the subjective-objective standard in relation to the acts of prison administrators.[32]

Prison officials and administrators may find it difficult to distill from *Knell* the standard of conduct required of them by the Seventh Circuit. The court stated in *Knell* the conduct expected:

> [I]n exercising their informed discretion officials must be sensitive and alert to the protections afforded prisoners by the developing judicial scrutiny of prison conditions and practices.[33]

In this case the court said that the plaintiff failed to allege or establish a policy of absolute deprivation of effective access to the courts as was forbidden under then existing percedent. The court found that the temporary deprivation of access while the plaintiff was in disciplinary isolation was de minimis and justified by the exigencies and considerations of prison discipline; controlling weight was given to the administrator's discretion. The court stated that its policy underlying immunity for public officials was

> the necessity of insuring principled and conscientious governmental decision making by affording some measure of freedom from fear of personal liability for the official exercise of discretion and the performance of required duties.[34]

Neither the court's policy nor treatment of the issue of liability offer any specific, detailed guidance to prison officials desirous of avoiding liability.

Consideration of a different fact situation in light of *Knell* may provide some insight into what may now be expected of officials. If a case such as *Poindexter v. Woodson*[35] had arisen following *Knell* in the Seventh Circuit rather than in the Tenth Circuit, it may have been decided differently. In this case inmates of the state penitentiary brought a civil rights action against state prison officials seeking an injunction and monetary damages arising from their being tear gassed, sprayed with water hoses, and confined in "strip cells" or solitary confinement following a prison riot. The court found the officials not liable for damages because it was within their discretion to deal with the situation in a reasonable manner and no evidence of malice was present. The court said that the use of these circumstances constituted cruel and unusual punishment.[36]

Following *Knell* an appropriate question in a case such as *Poindexter* may be whether the officials *should have known* that this punishment, long after the riot occurred, was cruel and unusual punishment and violative of the prisoners' established rights; if so, then they might have been held liable for damages notwithstanding lack of malice or the use of normal discretion. If one could expect the reasonable administrator to be aware that this course of punishment was unlawful, the objective branch of the *Knell* good faith test would not be satisfied, and the prison administrator would be held liable for any resulting damages. However, the reliance of the court in *Knell* on the state of established law and well-known legal principles indicates that a prisoner will have difficulty collecting monetary damages when the violation of a right involves ramifications that may be beyond the legal understanding of the official.

In conclusion *Knell v. Bensinger* follows in the wake of *Wood v. Strickland* and represents an extension of the tests for liability of prison officials for violations of prisoners' rights. The standard, however, was not strictly applied and the prison administrator escaped liability. Nevertheless, the adoption of this standard portends a trend toward more frequent personal liability of prison officials when the court, proceeding with both objective and subjective standards of required conduct, believes that the officials should have known that their acts were constitutionally impermissible.

[32]The next extension of this standard may be in its application to the negligent acts of officials. In *Knell v. Bensinger* the court said that the Supreme Court in *Wood v. Strickland* attempted to insure that "careless disregard or *negligent ignorance* of clear constitutional rights and duties would not be insulated frc.n liability." 522 F.2d at 725 (emphasis added).

[33] *Id.*

[34] *Id.*

[35]510 F.2d 464 (10th Cir. 1975).

[36]No injunction was issued in this case because the unlawful disciplinary methods were no longer in use. *Id.* at 465.