

BUILDING A CULTURE OF CORRUPTION

The Due Process Clause of the U.S. Constitution prohibits the government, including prison officials, from depriving a person of "life, liberty, or property without due process of law."¹

There is procedural due process and substantive due process principles. Procedural due process are the procedures that the government is required to provide a person before it can deprive someone of life, liberty, or property. For example, the right to notice of a particular action, the right to hear and be heard, and the right to call witnesses, among other procedures. While Substantive due process "bars certain arbitrary wrongful government actions 'regardless of the fairness of the procedures used to implement them.'"²

There is only limited protection under substantive due process. Substantive due process includes things such as protecting against forced psychotropic medication without justification,³ the right to refuse medical treatment⁴ and certain rights to privacy.⁵

What procedural due process a person has a right to depends on the hearing involved. In criminal hearings, for example, you are entitled to greater procedural protections than you would be in a prison disciplinary hearing.

There are basic procedural rights in prison disciplinary hearings, such as the right to notice of charges, a right to be heard and to present evidence, etc. However, how much this matters is left up to

the whims of prison officials.

These limited protections are important from a prisoners point of view. A disciplinary misconduct report (D.R.) can result in placement in isolation, sometimes for years, or can result in a prisoner being denied parole.

Prisoners can sometimes challenge D.R.'s in state or federal court if they believe they were denied due process. The courts will not, however, entertain the merits of a D.R. conviction. That is, they wont address whether it is right or wrong as long as there is "some evidence" to support the conviction. What constitutes "some evidence" is simply a prison official saying a prisoner did something even when no other evidence demonstrates that or contradicts it.

Most courts find as long as a prison official says you did something, you were given notice of the charges, a right to hear evidence, etc., then due process is satisfied. Prisoners are well aware that short of having a video and audio of an incident they will be found guilty. And sometimes even with audio and video an officers word is still taken over a prisoners. Which means, in either case, you'll be found guilty, placed in solitary and possibly denied parole.

Some courts have taken this a step further holding that false charges by prison staff do not violate the U.S. Constitutions Due Process Clause as long as you get your hearing. In prison parlance this is called "Kangaroo Court". Its one reason most prisoners do not contest D.R.'s or attend hearings. The prison "disciplinary system" allows

officials to allege whatever they want with nothing more than an officers say-so with impunity.

Thus, prison officials are free to introduce false inculpatory evidence.⁶ In other words, the introduction of false evidence in itself doesn't violate your rights. Courts have even permitted prisons to have a 90% "quota" of finding guilt before they can find prisoners not-guilty (if they do).⁷ Which means, if you are innocent they may still find you guilty to meet their "quota".

Some states, such as the state of Oregon, go a step further and sanction prisoners "fines" for disciplinary infractions to generate funds for the prison. This further encourages false misconduct reports and false findings of guilt to raise revenue. Not only can this negatively impact a prisoners parole, place him in solitary, or other adverse consequences, but it can put already indigent prisoners further in debt since most prison systems do not have paying jobs for prisoners (like Oregon, which has a constitutional ban on it). Prison "fines" follow a prisoner to the street and can cause pay checks to be garnished, taxes taken, and if a prisoner fails to pay, he can be sued. In Oregon, every misconduct report can result in a \$25 to \$200 fine. Many prisoners are thousands in debt for false misconduct reports.

Nor is this limited to prisons. City and county police who patrol the streets also manage their local jails and apply the same techniques. When you hear of an officer accused of shooting someone and then trying to cover it up, such as the recent shooting of a 17 year old Chicago boy 16 times, they are the same officers managing

the jail. Those officers learn their behavior from other officers and take that learned behavior of admitting false evidence to the streets.

Any Justice system that permits government officials — of any kind — to introduce false inculpatory evidence in any proceeding is building a culture of corruption.

FOOTNOTES

(1) U.S. Constitution, Amendments V and XIV. The Fifth Amendment's Due Process Clause applies to federal officials, while the Fourteenth Amendment applies to state and local officials.

(2) Zinerman v. Burch, 494 U.S. 113, 115, 110 S.Ct. 975 (1990) (citation omitted).

(3) Bell v. Wolfish, 441 U.S. 520, 99 S.Ct. 1861 (1979).

(4) White v. Napoleon, 897 F.2d 103, 111 (3rd Cir. 1990).

(5) Lawrence v. Texas, 539 U.S. 558, 564-579, 123 S.Ct. 2472 (2003) (finding substantive due process right of private choice in sexual matters);
Doe v. Relic, 257 F.3d 309, 316-317 (3rd Cir. 2001)
 (due process right to privacy in medical information).

(6) Sprauze v. Babcock, 870 F.2d 450, 452 (8th Cir. 1989);
Freeman v. Rideout, 808 F.2d 949, 951-53 (2nd Cir. 1986);
Hanrahan v. Lane, 747 F.2d 1137, 1140-41 (7th Cir. 1984).