

## **Is your project vulnerable to law suits?**

*By Joseph M. Weber*

It is typical to focus on cost when planning a jail project. While it is prudent to plan a project that fits within a jurisdiction's budget parameters, some of the hidden costs are often overlooked. If not correctly designed and operated, a jail project may have some "built in" liabilities that can surface years after the initial completion of the project.

This was brought to the attention of the Miller County Jail when they were served with a law suit arising out of an incident that took place in their jail in 2004. The initial complaint focused on both design and operations, alleging a design flaw regarding the doors on the holding cells and an operational deficiency alleging that the jail was routinely understaffed and its jailers lacked proper training.

The following is an excerpt from the opinion of the district court in the case of *Fields v Abbott Case No. 07-CV-04136-WAK*.

In rejecting the Miller County individual defendants' motion for summary judgment based on qualified immunity, the district court applied the state-created danger exception to the general rule that a governmental entity is not liable for injuries suffered by its employees at the hands of a third party. The court concluded that a reasonable Miller County Sheriff and reasonable County Commissioners would have reasonably understood the known and obvious dangers of having an interior door handle inside a drunk-tank cell, having a significantly understaffed jail, and having no classification of the jail's inmates, could, in their totality, support a claim that the Miller County Jail was deliberately indifferent in subjecting its jailers, specifically Fields, to these conditions. It therefore held that these defendants were on notice "that their actions in creating the dangerous conditions in the Miller County Jail created a risk of serious harm to Fields and the jail staff, and therefore, could violate Fields'[s] substantive due process rights as protected under the Fourteenth Amendment."

While this ruling was modified on appeal, it underscores the importance of being sensitive to potential liability involving both design and operations. A jurisdiction is well advised to retain qualified professional assistance when considering a proposed construction project.

The courts have often relied on professional associations to provide accepted industry standards that guide facility design and operations. When deciding conditions of confinement suits, they refer to those standards to assist them in determining if a jail design or operation fits within the parameters set forth by the U.S. Constitution.

Professional associations such as the American Correctional Association (ACA) provide standards governing the design and operation of a jail facility. Adherence to those standards is key in defending against claims of deliberate indifference, a deciding factor in stating a claim under 42 U.S. Code § 1983, in a civil action for deprivation of rights.

Jails are also governed by the Prison Rape Elimination Act (PREA). This act was signed into federal law in 2003 and standards were developed for the operation of confinement facilities in 2012. The purpose of those standards was to protect prisoners from sexual abuse by using certain strategies to detect, prevent, and respond to sexual abuse in confinement facilities.

While some argue that standards such as the ACA and PREA are non-mandatory, it is important to consider that the standards serve notice of problems that exist in a confinement setting and provide strategies to abate the risk. The court defined deliberate indifference in *Farmer v Brennan* as having subject knowledge and failing to abate the risk. A conscious decision to not employ those strategies can lead to a finding of deliberate indifference.

It is critical for a jurisdiction considering a jail project to select qualified professional assistance in the planning of such project. Those qualifications should include a working knowledge of all applicable standards. Failure to do so may result in some hidden costs that the jurisdiction may not have included in the budget.