

2/12/62

Memorandum No. 11(1962)

Subject: Study No. 52(L) - Sovereign Immunity

There is attached to this memorandum the portion of Professor Van Alstyne's study relating to governmental liability in health and medical services. For ease of reference, the questions presented by this portion of the study are set forth below:

1. Medical malpractice. Should public entities be liable for negligent diagnosis and treatment in public hospitals? Should such entities be liable for refusal to admit a patient to a public hospital? (Study pp. 528-31.)

2. Inadequate supervision of the mentally ill. Should public entities be liable for injuries caused by self-inflicted injuries by mentally ill patients which have resulted from a negligent failure to properly supervise? (Study pp. 531-33.)

3. Inadequate supervision of the mentally ill. Should public entities be liable for injuries caused through accident when the patient's exposure to the harm has resulted from a negligent failure to properly supervise? (Study pp.533-34.)

4. Inadequate supervision of the mentally ill. Should public entities be liable for injuries to patients caused by a negligent failure to supervise other mentally ill patients? (Study pp. 534-36.)

5. Inadequate supervision of the mentally ill. Should the public be absolutely liable for injuries caused by escaped mental patients, or should liability, if any, be based on negligence? (Study pp. 536-38.)

6. Torts of discharged mental patients. Should public entities be liable for injuries caused by mental patients who have been negligently discharged? (Study pp. 538-42.)

7. Wrongful arrest or restraint. Should public entities be liable for wrongful arrest or restraint of persons suspected of mental illness or contagious disease? Should the entity be immune if the arrest or detention is in reliance upon legal process which appears regular on its face? (Study pp. 542-44.)

8. Assaults upon patients. Should public entities be liable for assaults by public employees on patients and inmates of public hospitals? (Study pp. 544-45.)

9. Wrongful interference with patient's legal rights. Should public entities be liable for interference with a patient's attempts to seek legal redress, as for example, interference with a patient's attempts to file a writ of habeas corpus? (Study pp. 545-46.)

10. Injuries caused in administration of public health functions. Should public entities be liable for negligent or wrongful conduct of public health functions, such as negligent vaccination? negligently or maliciously imposed quarantine? negligent failure to quarantine? negligent failure to enforce quarantine? etc.? (Study pp. 546-49.)

See Professor Van Alstyne's recommendations on pages 552-53 of the Study.

Respectfully submitted,

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