
JAIL BULLETIN

NUMBER 36

DECEMBER, 1987

The Jail Bulletin is a monthly feature of the Crime Commission Update. The Bulletin may be used as a supplement to your jail in-service training program if officers study the material and complete the attached "open book" quiz. The Bulletin and quiz may be reproduced for use by your staff. We welcome any jail training materials you would like to contribute to the Bulletin.

LEGAL LIABILITY OF PUBLIC OFFICIALS AND EMPLOYEES

Inmate Lawsuits: The Astounding Figures

In some inmate and prison lawsuits, the inmates seek a court order that the city, county, or state improve the jail or prison conditions. For example, courts have ordered reduction of inmate population, improved sanitation, heat and lighting, and increased protection for non-violent inmates, to name only a few things.

However, an injured or ill-treated inmate often seeks damages from the county or city or from the public official or employee involved. The figures are astounding, as the following examples show:

\$2,000,000 - contempt fines issued against county commissioners who failed to comply with a court order to reduce population at their county jail. (*Mobile County Jail Inmates v. Purvis*, 581 F. Supp 222 (S.D. Ala, 1984)).

\$706,845 - former director and assistant warden personally liable for injuries and deaths ensuing from prison riot in Pontiac. (*Walker v. Rowe*, 80-C-5-310 (N.D. Ill, 1985)).

\$576,064 - awarded a man who was sexually assaulted by three other men in a drunk tank at a jail. A jury found that the jailers acted with "deliberate indifference" and "callous disregard." (*Lickliter v. Riverside County*, reported in Jail and Prisoner Law Bulletin (March 1985)).

\$502,000 - county liable for failure to train a deputy at a jail. The deputy did not immediately cut down an inmate who had hung himself with a bed sheet. (*Condon v. Ventura Co.*, U.S. Dist. Ct. (S.D. Cal. 1983)).

\$210,000 - county liable to inmates of county jail, which the court found was a "terrible facility" that "exceeded permissible constitutional limitations" because of overcrowding, poor sanitation and understaffing. (*McElveen v. County of Prince Williams*, 725 F.2d 954 (4th Cir. 1984)).

\$33,000 - settlement by a Tennessee county in a suit contending that a sheriff failed to segregate an inmate from two dangerous prisoners, who raped him. A chief deputy said that the jailers made every effort to segregate dangerous prisoners from others, but it was difficult in a poorly designed and overcrowded jail. (Reported in Jail and Prisoner Law Bulletin (March 1985)).

\$32,500 - two guards and three high-ranking officials found personally liable because the guards had used brutality (water hoses, tear gas, billy clubs) against an inmate. (Slakan v. Porter, 737 F.2d 368 (4th Cir. 1984)).

\$23,500 - police chief liable for failure to train a police officer who used excessive force during an arrest. (Billings v. Vernal City, U.S. Dist. Ct. (D. Utah 1982)).

\$10,000 - sheriff and staff liable when someone pressed a button on an electric jail door, which slammed the inmate's neck and back. (McIntyre v. Griffin, reported in Jail and Prisoner Law Bulletin (April 1985)).

Official Versus Personal Liability

As the above examples show, liability can run to the county or city, or ~~to the public officials and employees directly.~~ "Official liability" results when a public official or employee is found liable in his official capacity. In such a case, the governmental unit he represents is liable for damages and attorney fees.

On the other hand, if found liable as an individual, the public official or employee can be held personally liable for damages and attorney fees. Whether the governmental unit he represents will indemnify or reimburse him for the damages and attorney fees varies from state to state. For example, Alabama will pay up to \$100,000, provided the official does not act unlawfully or with gross negligence.

Furthermore, even when a public employee is found officially liable, he may be found personally liable for any punitive damages awarded. The governmental unit he represents is not obligated to pay punitive damages on his behalf. Many state laws do not require (one does not allow) the governmental entity to pay punitive damages, since the purpose of punitive damages (to deter future wrongs) is defeated if the public employee is indemnified by the government.

"Good Faith" Immunity: The Shield Against Personal Liability

When sued as an individual, a public official or employee has qualified immunity: the official is not personally liable for a violation of inmate rights if he acted in good faith. Until recently, lack of "good faith" could be proved only by evidence that the public official acted with malicious intent to injure the inmate or deprive him of his constitutional rights.

The new rule, as enunciated by the U.S. Supreme Court in Harlow v. Fitzgerald (1982), is that a public official is personally liable if:

1. the official violates clearly established statutory or constitutional rights
2. of which the official knew or should have known.

This new rule is objective--even if the official did not actually know that he was violating constitutional rights, he is liable if a judge determines the official should have known. "Clearly established" constitutional rights include prisoner's rights such as the prohibition of cruel and unusual punishment, the right to safety, the right to worship, and the right to an attorney, etc.

Deliberate Indifference: Loss of the Personal Liability Shield

A public employee can, of course, lose his good faith immunity if his violation of an inmate's clearly established constitutional rights is intentional. However, even if the violation is not intentional, the employee or official may still be personally liable if he acted with "deliberate indifference" or "callous disregard" of the inmate's rights.

For example, in Smith v. Wade (1983), an inmate in a Missouri reformatory for youthful first offenders was harassed, beaten, and sexually assaulted by his cellmates. He brought a section 1983 action against a correctional officer, asserting that the officer knew or should have known that an assault against him was likely. The jury found that the officer acted in deliberate indifference to the inmate's rights. The Supreme Court upheld an award against the guard of \$25,000 in compensatory damages (official liability) and \$5,000 in punitive damages (personal liability). The officer was required to pay the \$5,000 out of his own pocket because of his "deliberate indifference" to the constitutional rights of inmate Wade.

The principal here is affirmative duty. First, know what the inmate's clearly established constitutional rights are (in Smith, the right to reasonable protection from violence). Second, do something about it.

The definition of deliberate indifference is:

1. The administrator/employee/elected official knew or should have known
2. of a pattern of gross abuse*; and
3. after having such knowledge the administrator/employee/elected official did nothing.

* A single brutal incident may qualify as a section 1983 action, if the training program was so grossly inadequate as to constitute "deliberate indifference" by itself. Oklahoma City v. Tuttle (1985).

--Adapted from material prepared by
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QUIZ

Nebraska Jail Standards require that jail staff receive eighteen (18) hours of in-service training each year. The Jail Bulletin may be used to supplement in-service training if an officer studies the Bulletin, completes the quiz, and this process is documented by the jail administrator for review during annual jail inspection.

SUBJECT: LEGAL LIABILITY OF PUBLIC
 OFFICIALS AND EMPLOYEES

NAME _____

NUMBER 36

DATE _____

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_____ TRUE _____ FALSE

2. The purpose of punitive damages is to _____

3. A public official is personally liable if he/she violates clearly established statutory or constitutional rights which he/she knew or

4. In Smith v. Wade, the correctional officer was required to pay \$5,000 in punitive damages out of his own pocket because of his _____ to the constitutional rights of the inmate.

- a. clearly established indifference
- b. deliberate indifference
- c. lack of good faith

5. Is it possible for a county to be held liable for failure to properly train an employee?

_____ YES _____ NO

CREDIT: 1/2 HOUR CREDIT FOR JAIL IN-SERVICE TRAINING REQUIREMENT.

ANSWER SHEET SHOULD BE RETAINED BY JAIL ADMINISTRATOR

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