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# Duty to Intervene/ Duty to Protect



## **Josh Arnold, NCCE, CJE**

Director of Operations  
National Institute for Jail Operations

[jarnold@jailtraining.org](mailto:jarnold@jailtraining.org)  
Tel: 520-940-3047

## **Tate McCotter, MCJ, NCCE, CJE**

Executive Director  
National Institute for Jail Operations

[tmccotter@jailtraining.org](mailto:tmccotter@jailtraining.org)  
Tel: 801-810-5245



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Which sheriff runs for election because he or she is excited about running the jail?



What does the sheriff think the jail administrator's primary duties are?



The administrative affairs of the Office of Sheriff over the last two decades have completely changed ...



because  
of the  
**JAIL**



## OFFICERS AND STAFF

- Who works in the jail
- Training
- Resources
- Infrastructure
- Staffing



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# Duty to Protect

## LEGAL UNDERSTANDING

Duty arises because incarceration limits the ability for an inmate to protect himself/herself.

**Generally, when the government takes responsibility for a person, a duty arises to provide reasonable protection for that person.**



# Duty to Protect

What are some of the things agencies do to provide “reasonable” protection for incarcerated individuals?

- Classification System
- Medical services
- Humane living conditions
- Supervision



# Duty to Protect

“Prisons are necessarily dangerous places; they house society’s most antisocial and violent people in close proximity to one another. Regrettably, some level of brutality and sexual aggression among [prisoners] is inevitable no matter what the guards do . . . unless all prisoners are locked in their cells 24 hours a day and sedated.”

- Supreme Court Justice Thomas



# Duty to Protect

Examples of existing conditions:

- a. Prison officials disregard repeated warnings of danger to a particular inmate and refuse to make conditions safer; *Castro v LA*
- b. Prison officials know that an inmate is a suicide risk and leaves him in a cell with a long bedsheet;
- c) In midwinter, the furnace breaks down and the prison **refuses** to fix it.

*(Note: it is not the breaking down of the furnace that causes liability but the refusal to fix it).*



# Duty to Protect

To establish a claim for failure to protect, an inmate must show:

- He/she is incarcerated under conditions posing a substantial risk of **serious harm**; and
- prison officials acted with **deliberate indifference** to those conditions.



# Grimsley v MacKay

The Grimsley case provides an example of what **does not constitute failure to protect.**

Grimsley was a prisoner at the Utah State Prison in the maximum security unit.

The window to his cell was broken.



# Grimsley v MacKay

Another prisoner, MacKay was out in the hallway, grabbed a mop handle, shoved it through the hole in Grimsley's cell window, and gouged out his eye.





# Grimsley v MacKay

The 10th Circuit Court of Appeals held that Grimsley **could not establish** failure to protect under the 8th Amendment.

He was not confined under conditions that posed a substantial risk of serious harm.

Prison officials believed Grimsley was safe behind a steel door; they had never heard of anyone being harmed by an aggressor outside the cell.



# Duty to Protect



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# Duty to Protect

How does a facility Protect itself against Duty to Protect claims?

- Document! Keep receipts!
- Be able to demonstrate your efforts at maintaining a constitutional facility!
- Train- Officers must have an understanding of their Duty to Protect



# Duty to Protect

What Kind of Information is helpful?

- Overtime hired (money spent)
- Disciplinary Action
- Resources spent to maintain clean conditions. (exterminators, cleaning supplies, etc.)
- Stats on Grievances- a lack of complaints can show a lack of a problem!
- Spending on Medical-
- Good Policy!



# Duty to Intervene

Officers have a duty to intervene when they have an opportunity to prevent another officer from using unlawful force. Failure to adhere to this duty may lead to civil liability for the agency and the officer, in addition to possible criminal charges.





# Duty to Intervene

**Duty to Intervene knows no rank and does not give deference to seniority.**

**The Duty to Intervene should be outlined in your agencies policy and stressed in training.**

**The “George Floyd” effect. Litigation is not only aimed at the officer using force, but those around the officer that failed to intervene.**



# Duty to Intervene

**Don't allow someone else's actions to cost your livelihood and your career.**

**No one else is going to pay your mortgage for you.**

**No one else is going to take care of your family and the people you love and support.**

**Do the right thing!**





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Jails are statistically the largest county liability – 70.3% of all the reported losses from counties nationally come from JAILS!





# QUALIFIED IMMUNITY

Good-faith defense depends on **knowing** and **complying** with clearly established law.



# KNOW THE LAW

*"We therefore hold that government officials performing discretionary functions generally are shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a **reasonable** person would have known."*

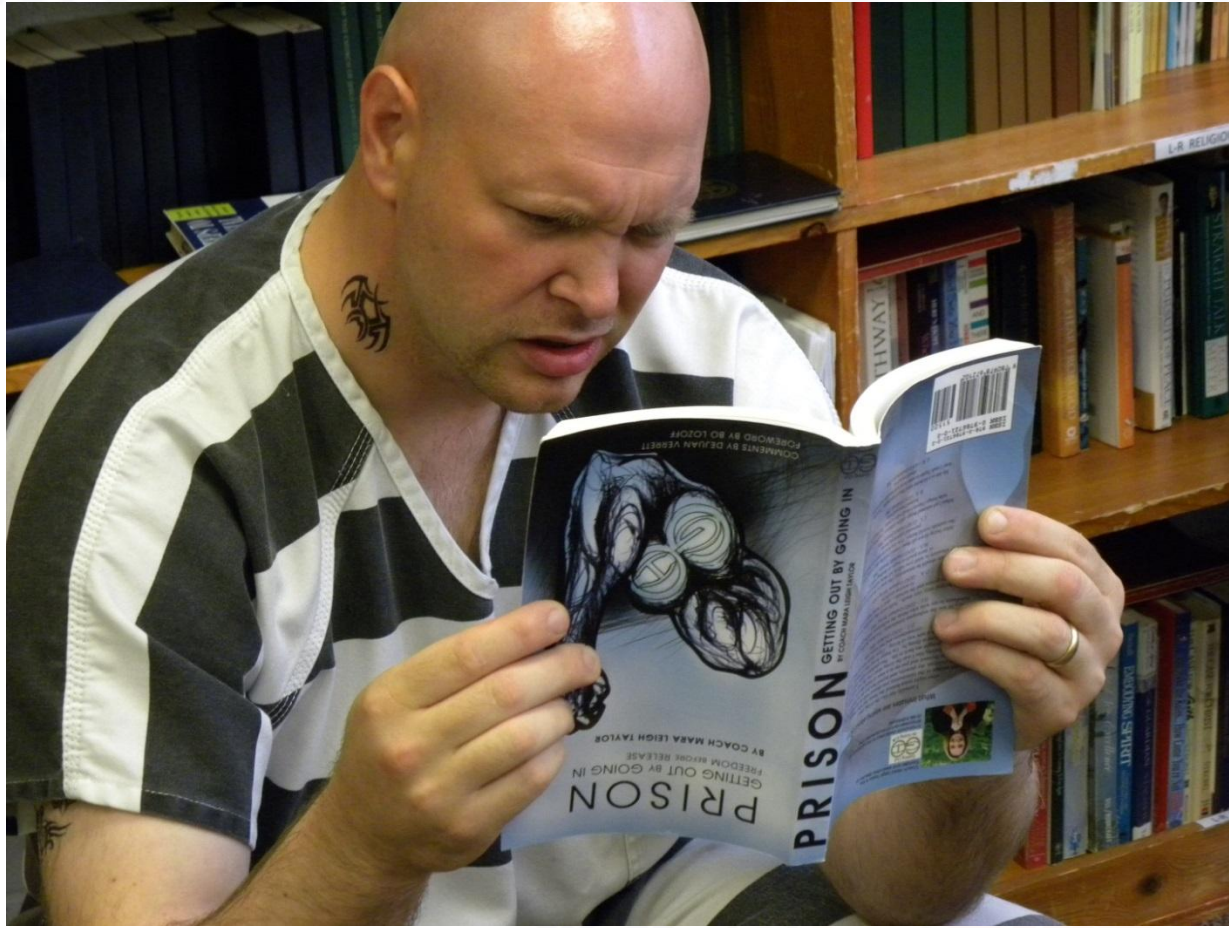
Harlow v. Fitzgerald, 457 U.S. 800 (1982).



# KNOW THE LAW

"If the law was clearly established, the immunity defense ordinarily should fail, since a reasonably competent public official should know the law governing his conduct."

**Harlow v. Fitzgerald**, 457 U.S. 800 (1982).



Whether you know the law or not, you are held responsible to know and uphold it.



# MAKING YOUR JAIL CONSTITUTIONALLY SAFE

Do you and your jail staff know the law ?

- Federal Laws
- Circuit Court of Appeals
- State laws and statutes

# The Courts Have Caught Up

## “Legal- Based”

What the law requires

- Constitutional
- Federal Law
- Circuit Court
- State Laws and statutes

## “Best Practices”

What the organization requires

- Subjective
- Not recognized by Courts
- Often supersedes the law
- Fails to address what the law requires

# Creating Constitutionally Safe Facilities

## What will the prosecution attack?

**Policy**

**Procedure**

Training

Documentation





THEY  
ARE  
COMING

**The battle of POLICY & PROCEDURE  
Is yours defensible?**





# DISCUSSION POINTS

- When were your policies last updated?
- Where do your policies come from?
- How are policies different than procedure?
- Are they defensible in court?



# How do Policies & Procedures Relate to Staff Training?

Training is intended to provide staff with an understanding of the law that governs their conduct. It is important for staff to understand and implement **the clearly established law that governs their actions.**



# How do Policies & Procedures Relate to Staff Training?

- Written directives are the most effective way of providing consistent and uniform guidance and direction to staff and to regulate staff actions, performance, and conduct.
  - Provide **rationale** for policies (the why - critical)
- **Policy and actual practices should be the same.** (consistency).



# How do Policies & Procedures Relate to Staff Training?

- If there are significant differences between policy and practice officials:
  - **Evaluate the existing policies** to determine if policy modification would be appropriate; and



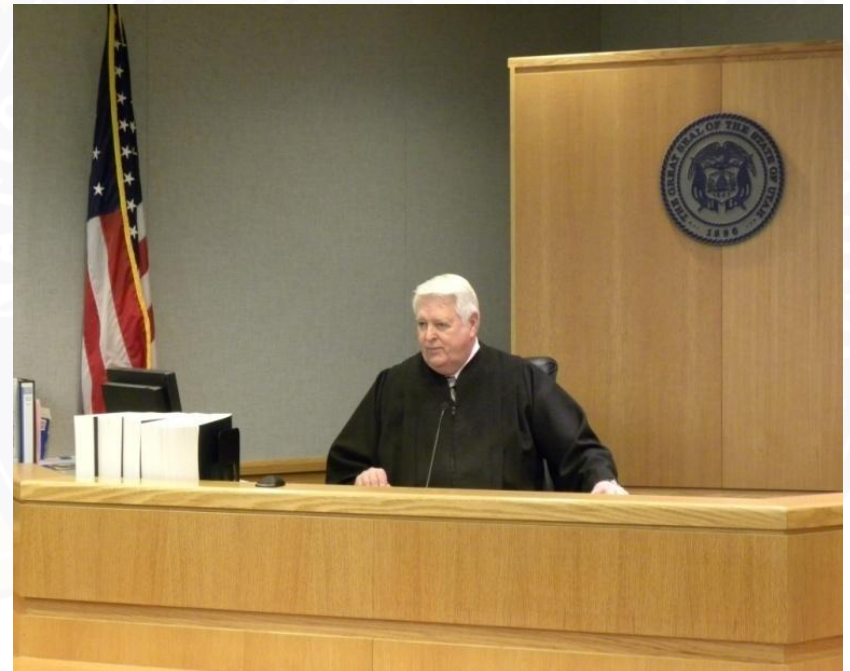
# How do Policies & Procedures Relate to Staff Training?

- If there are significant differences between policy and practice officials:
  - Should **initiate corrective action** and, when necessary, **impose staff discipline** to enforce compliance.



# Policy and Procedure

**Administrators should limit discretion** – especially of line staff – to ensure compliance with constitutional and other legal requirements. Merely writing policy and procedures is not adequate; policy directives must also be **enforced**.



**Smith v. City of Fontana**, 818 F.2d 1411, 1420 (CA9 1987), *cert. denied* 108 S.Ct. 311 (1987)

(failure to enforce regulation created atmosphere of lawlessness).



# Performance Management

Performance management requires a commitment to the selection of qualified personnel, initial and continuous attention to performance planning and then to regular performance evaluation. If these items are in place and successful then the need for discipline is diminished.

However, **supervisors must discipline when they discover that a “properly trained” employee has violated policy.**



# How do Policies & Procedures Relate to Staff Training?

Training should also assist officers in **developing the skills and decision making** capability essential to the task of managing incarcerated inmates limiting the potential for in-custody death and custody/control issues.

Training should be geared to ensuring staff are provided the knowledge, skills, and motivation to protect inmates' welfare and safety and use force within legal requirements (policy/procedure).



# Future Webinars!

- **Session 3: Audits – Find the Landmines before You step on One**  
July 1, 2026 from 11:00 AM to 12:00 PM -
- **Session 4: Know the Law – The Importance of Keeping Up with the Law Pertaining to Corrections**  
August 5, 2026 from 11:00 AM to 12:00 PM -
- **Session 5: Staff Retention: How to Reduce Turnover**  
September 2, 2026 from 11:00 AM to 12:00 PM -
- **Session 6: Beneficial Training to Reduce Liability**  
October 7, 2026 from 11:00 AM to 12:00 PM -
- **Session 7: Inmate Death – How to Reduce Liability, Suicide Prevention Policy**  
November 4, 2026 from 11:00 AM to 12:00 PM -
- **Session 8: Procedures for Suicide Prevention – Proactive Steps Your Agency can take to help Prevent Suicide in your Facility**  
December 2, 2026 from 11:00 AM to 12:00 PM -



# What Can NIJO Do for You?

- On-Line DACOTA training
- BASIC Academy- ABC Academy for beginners
- Accreditation- Become a NIJO Accredited Facility!
- Legal Based Jail Guidelines- Corrections Law at your fingertips!
- Special Services- Staffing Analysis, Operational Assessments, In-Person Training, etc.
- Legal Based Policy!
- ELITE Academy for Jail Administrators!

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Director of Operations  
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[jarnold@jailtraining.org](mailto:jarnold@jailtraining.org)  
Tel: 520-940-3047