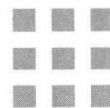


The background of the cover features the black silhouettes of a man and a woman walking away from the viewer, holding hands. They are positioned in the upper half of the frame, with their legs and feet visible in the lower half. The overall tone is somber and reflective.

# **CIVIL LIABILITY** IN CRIMINAL JUSTICE

DARRELL L. ROSS | SIXTH EDITION

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# Civil Liability in Criminal Justice

Sixth Edition

Darrell L. Ross



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# Preface

Civil litigation filed against criminal justice agencies is an increasing phenomenon. Due to the proliferation of civil litigation against criminal justice agencies, professors and trainers can no longer just concentrate on the criminal law. As a response, college courses and training have been developed to expose students and practitioners to the civil liability process at the university, community college, and agency levels. This book has been written in an attempt to provide information that will aid in better understanding the civil process.

Due to the nature of civil litigation today, students and practitioners must not only have a working knowledge of the criminal law, but also possess a firm grasp of the civil law process. The two systems have distinct differences and implications. In contemporary society, a criminal justice practitioner must know how to function in both systems. Students must be aware that their actions as a practitioner will more than likely be probed by a citizen or a prisoner plaintiff claiming that their actions or inactions deprived them of their constitutional rights. Likewise, practitioners must be continually updated on judicial decisions that affect their job performance. This edition of *Civil Liability in Criminal Justice* has been updated with 79 new cases, including 12 new United States Supreme Court decisions. The text is written with the needs of college students, academy recruits, veteran practitioners, administrators, and agency trainers in mind. Acquiring a complete understanding of the distinctions of both systems will greatly benefit the reader.

The book can be a stand-alone text for a legal course or a supplement to an administrative course. The text has not been written as legal advice, because only attorneys may provide such advice. Rather, the text provides general information relative to the civil liability process that affects police and correctional situations. Therefore, the text has been structured to integrate United States Supreme Court decisions and to provide lower court decisions in order to illustrate how different cases have been applied to police and correctional situations. The text also integrates research on civil liability that underscores pertinent legal issues, liability trends and patterns, policy and procedure issues, training issues, and individual officer and administrative responsibilities. In this edition, 55 new research studies that address varying aspects of civil liability and criminal justice agencies have been added. Combining these features not only provides useful information in understanding the court's decisionmaking process, but also provides the reader with realistic examples and research on how cases are applied at the criminal justice agency level.



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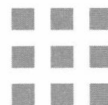
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# Acknowledgments

While a book may be the work and dream of the author, many individuals assist in the final product. First I would like to thank Michael (Mickey) Braswell, Ph.D., of LexisNexis/Anderson Publishing for giving me the opportunity to revise this edition of the text. His friendship, insights, patience, and suggestions greatly assisted me throughout the course of updating the book.

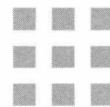
The substance of the text would not have been fully completed without the influence of three individuals. Thanks to Robert L. Parsons, Ph.D., who encouraged me to pursue a Ph.D. years ago, and his continued guidance, advice, and strategies for working on civil cases have been immeasurable. A debt of gratitude is owed him for sharing his knowledge in policing, use of force, and civil litigation.

Many thanks to Joe Seward and Chris Johnson, civil litigators, who successfully defend criminal justice officers and agencies in civil litigation matters. Working with them on civil cases has greatly increased my knowledge of the civil process. Their legal skills and talents illustrated during discovery, motion preparation, and in the courtroom are unmatched and have enhanced my ability to write about defenses.

Much appreciation goes to three civil liability scholars who may not be aware that their work and research in civil liability has greatly influenced my interest in the subject for several years. Thanks to professors Rolando del Carmen, Victor Kappeler, and Michael Vaughn for their pioneering and continued research and publication efforts in this area. These three individuals are without question leaders in criminal justice regarding civil liability issues. Their work has been an inspiration to me to further research, write, and publish on civil liability topics. Thanks for your work.

Many thanks go to the professors, students, and practitioners who have used the text in order to increase their knowledge in this continually changing area of the law.

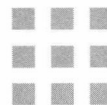
And last, but certainly not least, I would also like to thank my wife Judy and my daughter Gretchen for understanding my commitment for endeavoring to continue this research.



# About the Author

Darrell L. Ross is a professor and the Department Head for Department of Sociology, Anthropology, and Criminal Justice at Valdosta State University. He is the Director of the Center for Applied Social Sciences.





# Contents

Preface	xi
Online Instructor and Student Resources	xiii
Acknowledgments	xv
About the Author	xvii
1 Overview of Civil Liability	1
Overview	1
Trends in Police Civil Lawsuits	4
Trends in Correctional Litigation	13
Summary	17
References	17
2 Foundations for Liability	23
Overview	23
Liability Under Tort Law	23
Criminal Law	24
Torts	24
Types of Torts	25
Other Types of Liabilities	26
Summary	35
References	36
3 Civil Liability Under State and Federal Tort Law	37
Overview	37
Duty	38
Breach of Duty	39

Proximate Cause	39
Occurrence of Actual Injury	40
Special Duty and Foreseeability	40
Areas of Potential Negligence in Criminal Justice	42
Federal Tort Claims Act	57
Defenses to Negligent Tort Actions	60
Remedies in Tort Actions	63
Summary	65
References	65
<b>4 Civil Liability and Federal Law: Section 1983 Litigation</b>	<b>67</b>
Overview	67
History of § 1983	67
Resurrection of § 1983	68
Essential Elements of § 1983 Lawsuits	69
Mechanics of a § 1983 Lawsuit	80
Summary	83
References	84
<b>5 Defenses to Civil Litigation and Risk Management</b>	<b>85</b>
Overview	85
Official Immunity	85
Sovereign Immunity	85
Types of Immunities	86
Other Strategies for Reducing the Risk of Civil Liability	101
Elements of Managing Risk	102
Monitoring and Evaluating Risk Control	108
Examples of Best Practices	110
Summary	112
References	113

<b>6</b>	<b>Administrative and Supervisory Liability</b>	<b>115</b>
	Overview	115
	Supervisory Liability Issues	116
	Theories of Supervisory Liability	122
	First Line of Defense	145
	Summary	146
	References	147
<b>7</b>	<b>Liability for Failure to Train</b>	<b>149</b>
	Overview	149
	Liability Framework for Failure to Train Under <i>Canton</i>	149
	Status of Failure-to-Train Liability	156
	Implications of Failure-to-Train Litigation	157
	Failure to Train in Corrections	176
	Summary	178
	References	181
<b>8</b>	<b>Operating Criminal Justice Agencies Under a Consent Decree</b>	<b>183</b>
	Overview	183
	Section 14141	183
	Background of § 14141	185
	Investigation Trends of § 14141	186
	Principal Components of § 14141 Consent Decrees	188
	Summary	197
	References	199
<b>9</b>	<b>Personnel Issues and Liability</b>	<b>203</b>
	Liability and Sexual Harassment	203
	Americans with Disabilities Act	217

Wrongful Termination	226
Fair Labor Standards Act	235
Employee Drug Testing	239
Summary	244
References	246
<b>10 Use of Force in Law Enforcement and Corrections</b>	<b>249</b>
Overview	249
What Is Known About the Use of Force by Criminal Justice Personnel?	249
Lower Court Use-of-Force Decisions	255
Use-of-Force Standards Established by the Supreme Court	256
The <i>Graham</i> Decision and Objectively Reasonable Force	267
Application of <i>Graham</i>	270
Post-Arrest Use of Force	289
Post-Conviction Use of Force	291
Summary	301
References	303
<b>11 Section 1983 and Correctional Liability Issues</b>	<b>307</b>
Overview	307
Application of the Deliberate Indifference Standard	307
The Prison Litigation Reform Act and the Antiterrorism and Effective Death Penalty Act	331
Searches and Liability	335
Liability and Parole Decisions	337
Summary	340
References	341
<b>12 Section 1983 Actions in Law Enforcement</b>	<b>343</b>
Overview	343
False Arrest	343

False Imprisonment	347
Police Pursuits	348
Failure to Protect	357
Domestic Violence	360
Searches	367
Special Response Teams	375
Racial Profiling	381
Summary	384
References	386
<b>13 Liability and Wrongful Custodial Death</b>	<b>389</b>
Overview	389
Wrongful Custodial Deaths	390
Wrongful Custodial Death Claims Under § 1983	394
Claims Against Detention Personnel	409
Suicides in Detention	414
Summary	425
References	427
<b>14 Conclusions: Shifting Directions in Civil Litigation</b>	<b>429</b>
Overview	429
Cases	429
Administrative Issues	433
Liability Shifts in Corrections	438
Officer Performance	441
Summary	442
References	443
Table of Cases	445
Subject Index	469
Index of Cases	479

# Overview of Civil Liability

## OVERVIEW

The intrusive nature of the duties that criminal justice personnel perform exposes them to higher degrees of liability than other occupations. This is not to suggest that physicians, psychologists, social workers, therapists, teachers, or administrators are unlikely to be the subject of a civil lawsuit. It is because criminal justice practitioners restrict citizens' and prisoners' liberties and rights, and therefore are more likely to become involved in litigation than members of other professions.

Among the many job functions that criminal justice personnel perform, responding appropriately to street- and institution-level situations is paramount. Criminal justice personnel must also exercise a high degree of skill in using their authority and discretion when implementing department policy and enforcing the law. Legal actions against law enforcement officers frequently arise out of situations in which they have restricted the rights of citizens or prisoners. Other litigation may result from allegations of failing to perform legally assigned duties, performing duties in a negligent manner, misusing authority, using excessive force, or intentionally depriving a prisoner or other person of his or her constitutional rights.

Filing a civil lawsuit in the United States has become all too common since the 1970s. American society has become highly litigious, resorting to filing civil lawsuits without hesitation. Litras and DeFrances (1999) conducted a study for the Department of Justice on the overall trends of 500,000 tort cases filed in the United States during fiscal years 1996–1997. Civil cases arising out of the 75 largest counties were studied. Types of claims ranged from personal injury actions, such as airplane accidents, assaults, libel and slander, and medical malpractice, to motor vehicle accidents and product liability. Motor vehicle accident claims accounted for 20 percent of the cases, while product liability cases accounted for 15 percent and medical malpractice cases accounted for eight percent. Plaintiffs won 45 percent of all cases filed. Plaintiffs were awarded damages in 86 percent of these cases, and punitive damages in 18 percent. The median award was \$141,000. In 10 percent of the cases, the plaintiff was awarded more than \$1 million, and in eight percent of the cases, awards exceeded \$10 million. Approximately \$2.7 billion was awarded in combined compensatory and punitive damages.

Cohen (2005) studied the trends in punitive damage awards in civil trials in the 75 largest counties in the United States during 2001. He reported that slander (58%), intentional tort (36%), and false arrest/imprisonment (26%) represent three of the most common categories in which punitive damages are awarded. Of the 6,504 cases studied, the plaintiff was awarded punitive damages in six percent of the cases. This percentage has remained stable since 1992. Juries are more likely to grant punitive damages than judges. In one-half of the verdicts, the plaintiff was awarded \$50,000 or more, in 12 percent \$1 million was awarded, and in one percent, \$10 million was awarded. Punitive damages exceeded compensatory damages

in 43 percent of the cases. Medium and maximum ranges of punitive damages were reported on the three common categories: intentional torts ranged from \$16,000 to \$4.5 million; slander ranged from \$77,000 to \$700,000; and false arrest/imprisonment ranged from \$8,000 to \$100,000.

Kyckelhahn and Cohen (2008) performed an assessment of the trends in civil litigation in federal district courts and the outcomes of civil rights disputes from 1990 to 2006. They reported that a significant reason for the variance of trends in civil litigation is due to the expansion of civil rights law with the passage of the Americans with Disabilities Act of 1990 and the Civil Rights Act of 1991. The Civil Rights Act of 1991 amended several federal employment discrimination laws. The Act also provided for compensatory and punitive damages to be awarded, and expanded the use of jury trials.

In the 17-year assessment, Kyckelhahn and Cohen reported that overall civil rights cases filed in federal district courts more than doubled during the 1990s, then began to decline in the early 2000s, and from 2003 to 2006, filings in federal district courts decreased by approximately 20 percent. From 1990 to 2006, the percent of civil rights claims concluded by trial declined from eight to three percent. From 1990 to 2006, about nine out of 10 civil rights filings involved disputes between private parties. The trend in filing private-party disputes emerged with 16,310 cases filed in 1990, increased to a peak of 40.4 in 1997, and declined to 30.4 cases in 2006.

In 1990 jury and bench trials each accounted for 50 percent of all civil rights trials, but by 2006 jury trials accounted for 87 percent of civil rights trials held in federal district courts. During the reporting period, employment discrimination accounted for about one-half of all civil rights filings in federal district courts, but filings began to decline in 2004. The percentage of plaintiffs who won at trial amounted to about 30 percent. From 2000 to 2006, the median damage award for prevailing plaintiffs ranged from \$114,000 to \$154,500. The combined 2000 to 2006 median jury award was \$146,125, while the median bench award was \$71,500. The period from filing a civil rights suit to resolution in federal district courts took, on average, about 10 months.

Further, Lanton and Cohen (2008) examined the dispositions of civil bench and jury trials in state courts in 2005. They assessed 26,950 disposed cases, which account for a small percentage of the 7.4 million civil claims filed in state courts around the country. They reported on nine litigated categories and found that the plaintiff prevailed in 56 percent of the filings that plaintiffs were awarded punitive damages in 5 percent, and the median damage award amounted to \$28,000.

Plaintiffs were more likely to prevail in claims involving motor vehicles, animal attacks, and employment discrimination, and less likely to prevail in claims of false arrest/imprisonment and product liability, to mention only a few. High combined compensatory and punitive awards of near or more than \$100,000 included: premises liability, employment discrimination, medical malpractice, and asbestos. More than 60 percent of the plaintiff winners were granted final monetary awards of \$50,000 or less. A jury decided 90 percent of the personal tort claims, while judges decided about 70 percent of business-related civil trials (contracts and real property) in 2005.

Moreover, Cohen and Harbacek (2011) examined punitive damage awards in state courts during 2005. As discussed in Chapter 2, tort claims like assault and battery are litigated in state courts.

Compensatory and punitive damages may be awarded to the prevailing plaintiff. Cohen and Harbacek found that in 25,000 tort claims, 12 percent of the plaintiffs sought punitive damages and they were awarded in 5 percent. Of these awards, 30 percent were awarded about \$64,000 and 13 percent were awarded punitive damages of \$1 million or more. The researchers also reported that punitive damages are more likely to be awarded in assault and battery, slander, or libel cases, which have elements of willful or intentional behavior that would support a punitive damage request.

Criminal justice agencies and personnel are also vulnerable and easy targets for litigation. During the 1980s and 1990s, there were unfortunately a number of high-profile civil liability cases that brought to the forefront the problem of police and correctional officer misconduct nationally. The City of Philadelphia, Pennsylvania, paid out approximately \$3.2 million in 1996 in two separate lawsuits related to a bombing incident that occurred in 1985. Police officers dropped C-4 explosives from a helicopter on a residence in order to drive out members of an antigovernment group. The bomb ignited and fire spread through numerous residences, destroying 61 structures and killing 11 people.

Other incidents have created controversy about police conduct and have resulted in civil litigation. The beating of Rodney King in 1991 led to three Los Angeles police officers being criminally indicted, convicted, and sent to federal prison. Later, the City of Los Angeles, California, paid out \$3.8 million in a civil judgment to King. In 1993, two Detroit, Michigan, police officers were prosecuted, convicted, and sentenced to prison for the beating death of Malice Green. In 2000, several New York City police officers were convicted and sentenced to prison for beating Abner Louima and forcing a toilet plunger handle into his rectum.

Moreover, there have been successful outcomes in high-profile cases alleging officer misconduct. In the spring of 2000, four New York City police officers were acquitted of criminal charges in the shooting death of Amadou Diallo. In that case, the officers fired their weapons 41 times. Officers approached Diallo and he made a sudden reaching movement for his wallet. Because of poor lighting in the doorway of the apartment complex, visibility was poor and officers mistakenly took his movements as threatening and the appearance of the wallet for a weapon.

In the summer of 2000, the Federal Bureau of Investigation prevailed in a civil lawsuit brought by survivors and families of the Branch Davidian group in Waco, Texas (Garcia, 2000). Agents of the Bureau of Alcohol, Tobacco, and Firearms (ATF) were executing a warrant for the arrest of David Koresh for firearms violations, when they encountered lethal resistance from him and members of his cult in February 1993. Several agents were injured and six were killed. For more than 50 days, Koresh and his followers refused to exit their compound and submit to arrest. The siege ended with the main housing structure being burned as FBI agents attempted to enter the building.

Four million dollars in damages was paid out for a deadly force incident in 1995. The Ruby Ridge standoff incident in Montana left one U.S. Marshal and the wife and two children of



Randall Weaver dead. An FBI sniper shot and killed Vicki Weaver and her infant child, and a U.S. Marshal shot and killed the Weavers' 14-year-old son, Samuel. Federal agents were attempting to arrest Weaver on charges of possessing and selling illegal firearms.

While individual civil lawsuits filed against police officers have gained momentum since the 1980s, the federal government, through the Department of Justice, has brought civil lawsuits against several police departments. These lawsuits have been brought under § 210401 of the Violent Crime Control and Law Enforcement Act of 1994 (Title 42 U.S.C. § 14141). The Pittsburgh, Pennsylvania, and Steubenville, Ohio, police departments were the first police agencies to complete federal oversight through a consent decree for five years through this law (DOJ, 1997a,b; 2005). Since this law began to be used by the Department of Justice in 1997, 22 police agencies have been investigated and are in various stages of a five-year consent decree or a Memorandum of Agreement (MOA) (DOJ, 2005).

Jails and prison systems in the United States are also subject to prisoner civil litigation and many have sustained consent decrees. Koren (1994) reported that the number of correctional systems under court order/consent decree increased from 11 in 1988 to 39 in 1994, largely due to prisoner litigation. Correctional entities have also been targets of prisoner litigation. In 2000, the Michigan Department of Corrections settled several civil lawsuits involving sexual abuse of female prisoners by male officers. In Texas, a privately operated jail incurred litigation stemming from a shakedown in which officers were alleged to have used excessive force and physically abused prisoners, violating their constitutional rights. The actions of the "shakedown" were videotaped and later broadcast on *Dateline NBC* in 1997. The videotape showed officers and command personnel requiring prisoners to crawl across the floor nude, while officers kicked, pepper-sprayed, and prodded them with stun guns, then used a dog to move them out of their cells. On several occasions, the video showed the dog biting various compliant prisoners. This incident resulted in a civil litigation claim against the sheriff, the chief deputy, and a county official in charge of the detention center's emergency response team (*Kesler v. King*, 1998). The claim alleged the use of excessive force, failure to train, failure to supervise, and a failure to screen prospective officer candidates prior to employment. The court ruled against the county, holding that it was not objectively reasonable to use force or the canine in such a situation, in which prisoners were compliant.

The purpose of this chapter is to examine the prevalence of civil liability in police and correctional work. Since the 1960s, citizens and prisoners in the United States have, with increasing frequency, filed civil lawsuits against police and correctional officers. Trends and the subject matter of these lawsuits are still emerging, and accurate data that fully tracks this area of the law is sparse. Recognizing this, emerging trends and patterns of citizen and prisoner litigation are presented.

## Trends in Police Civil Lawsuits

Much of the previous scholarly research on police civil liability has focused on precedent-setting cases decided by the United States Supreme Court (Barrineau, 1987, 1994; del Carmen, 1993; del Carmen & Smith, 1997; Franklin, 1993; Kappeler, 1997; Klotter, 1999; Smith, 1995;