CIVIL RIGHTS

PUNITIVE DAMAGES IN SECTION 1983 ACTIONS: THE EIGHTH CIRCUIT'S REQUIREMENT OF MALICIOUS INTENT

INTRODUCTION

During the survey period, the Eighth Circuit Court of Appeals decided three important cases involving punitive damage awards under Title 42, section 1983 of the United States Code. In Branchcomb v. Brewer, Harris v. Pirch, and Pellowski v. Burke, the Eighth Circuit held that malicious intent was necessary to support an award of punitive damages under section 1983. Previously, in Wade v. Haynes, the Eighth Circuit interpreted malicious intent as encompassing either actual or implied intent. In Wade, the defendant appealed the punitive damages award and the

2. 683 F.2d 251, 252 (8th Cir. 1982). Although the record does not explicitly state that the plaintiff sought punitive damages, there is no differentiation made between compensatory and punitive damages in the case, and the Eighth Circuit's language and test for recovery indicates that the plaintiff sought punitive damages. After oral argument, the Eighth Circuit remanded with directions to make more specific findings as to the defendants' state of mind, explaining that "plaintiff must show something more than mere inadvertence or negligence. He must show the defendants were deliberately indifferent to his constitutional rights, either because they actually intended to deprive him of some right, or because they acted with reckless disregard of his right to be free from violent attacks by fellow inmates." Id. at 252. Cf. Guzman v. Western State Bank of Devils Lake, 540 F.2d 948, 953 (8th Cir. 1976) (punitive damages may be awarded where the defendant exhibits oppression, malice, gross negligence, willful or wanton misconduct, or a reckless disregard for the civil rights of the plaintiff).
3. 677 F.2d 681, 686 (8th Cir. 1982).
4. 686 F.2d 631, 634-35 (8th Cir. 1982).
6. Id. at 786. See Wade v. Haynes: The Eighth Amendment Rights of Prisoners, 15 CREIGHTON L. REV. 857, 861 (1982). See, e.g., Galloway v. General Motors Acceptance Co., 106 F.2d 466, 470 (4th Cir. 1939) ("recklessness" is the equivalent of willfulness or intentional wrongdoing so as to authorize the recovery of punitive damages).

Actual express malice is defined as "malice in fact; ill will or wrongful motive; a deliberate intention to commit an injury, evidenced by external circumstances." BLACK'S LAW DICTIONARY 1109 (4th ed. 1968). Implied malice is defined as "malice inferred by legal reasoning and necessary deduction from the res gestae or the conduct of the party. Malice inferred from any deliberate cruel act committed by one person against another, however sudden." Id. at 1109. Cf. New York Times Co. v. Sullivan, 376 U.S. 254, 279-80 (1964) ("actual malice" in libel law is not ill will, but rather knowledge of falsity or reckless disregard for the truth).
United States Supreme Court has granted *certiorari* to decide the issue of whether an award of punitive damages under section 1983 requires a showing of *actual* malice.

This article abstracts a definition of what "actual malice" meant in the Eighth Circuit prior to the survey period. In addition, the relevant decisions handed down during the survey period are analyzed to see what, if anything, they have added to the Eighth Circuit's definition of actual malice. Finally, this article discusses what "actual malice" will mean if the Supreme Court reverses or confirms the Eighth Circuit's decision in *Wade*.

**BACKGROUND**

**History of Section 1983**

Section 1983 was originally enacted as the Ku Klux Klan Act of 1871. It was enacted to provide a measure of federal control over state and territorial officials who were reluctant to enforce state laws against persons who violated the rights of newly freed slaves and union sympathizers. The remedy created was not exclusively against the Klan or its members, but against those who, representing the state in some capacity, were not enforcing the law. The Act provided a right of action in federal court against local government officials who deprived citizens of their constitutional rights by failing to enforce the law or by unfair and unequal treatment. Thus, an aggrieved citizen is given a neutral federal forum in which to air a complaint, instead of being forced to sue state officials in state courts, which may be biased. Section 1983 provides:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

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8. 50 U.S.L.W. 3831 (U.S. April 19, 1982) (No. 81-1196).
10. Id. at 172-73 (citing *CONG. GLOBE, 42nd Cong. 1st Sess. 244 (1871)*). See generally *THE RECONSTRUCTION AMENDMENTS' DEBATES 484-571* (A. Avins ed. 1967).
12. Id. at 180.
13. Id. at 181-83.
Section 1983 lay dormant for ninety years until 1961. In *Monroe v. Pape*, the United States Supreme Court held that the language of section 1983 means exactly what it says: government officials who act under color of state law may be liable for fourteenth amendment violations even though the state has a law which would give relief if enforced and the challenged conduct also violates a state law. The Court reached this conclusion after its review of the history and debates surrounding the enactment of section 1983:

It is abundantly clear that one reason the legislation was passed was to afford a federal right in federal courts because, by reason of prejudice, passion, neglect, intolerance or otherwise, state laws might not be enforced and the claims of citizens to the enjoyment of rights, privileges, and immunities guaranteed by the Fourteenth amendment might be denied by the state agencies.

More importantly, the Court held that specific intent to deprive a person of a federal right was not necessary to state a section 1983 claim and that "(s)ection [1983] should be read against the background of tort liability that makes a man responsible for the natural consequences of his actions."

As a result of the Court's holding on this latter issue in *Monroe*, and because of the apparent breadth of the language of section 1983, there has been considerable dispute over its scope and the proper application of common law tort principles to a section 1983 claim. Most recently, questions concerning the appro-
appropriate standard for punitive damage awards under section 1983 have created confusion in the federal courts. Much of the confusion centers around whether actual malice should be required as the foundation for punitive damages under section 1983 or whether implied, i.e., legal malice is sufficient.

Punitive Damages in Tort Law

Compensatory damages are awarded to compensate an injured party for the injury sustained and nothing more. They are awarded to the extent that will make good or replace the loss caused by the wrong or injury. Punitive damages, on the other hand, are awarded where the wrong done to a plaintiff was aggravated.

Immunities that do not apply to an action under § 1983. Conversely, the developing law of torts may extend potential liability to some defendants beyond the reach of the federal statute." Id. at 11, n.34 (citing Carter v. Carlson, 447 F.2d 358, 361 (D.C. Cir. 1971), rev'd on other grounds, 409 U.S. 418 (1973)).

See Parratt v. Taylor, 451 U.S. 527, 533 (1981) (the Court noted that its earlier decisions have not aided the lower federal courts in their struggle to determine the correct manner in which to analyze § 1983 claims which allege facts that are commonly thought to state a claim for a common-law tort, normally dealt with by state courts, but instead are couched in terms of a constitutional deprivation and relief is sought under § 1983).

The diversity in approaches among the lower federal courts for determining the appropriate standard for an award of punitive damages under § 1983 is astounding. The various standards include: (a) aggravated circumstances, Konczak v. Tyrrell, 603 F.2d 13, 18 (7th Cir. 1979) cert. denied 444 U.S. 1016 (1980); Spence v. Staras, 507 F.2d 554, 558 (7th Cir. 1974); (b) malice or actual intent, Morrow v. Igleburger, 584 F.2d 767, 769 (6th Cir. 1978); Stengel v. Belcher, 522 F.2d 438, 444 (6th Cir. 1975); Smith v. Losee, 485 F.2d 334, 344 (10th Cir. 1973) cert. denied 417 U.S. 908 (1974); Stolberg v. Board of Trustees for State Colleges of Conn., 474 F.2d 485, 489 (2d Cir. 1973); Gill v. Manuel, 488 F.2d 799, 801 (9th Cir. 1973); (c) intent or reckless disregard, Cochetti v. Desmond, 572 F.2d 102, 106 (3d Cir. 1978); (d) egregious conduct, Fielder v. Bosshard, 590 F.2d 105, 111 (5th Cir. 1979); (e) wilfulness of the defendant's conduct and the indignity suffered by the plaintiff, Antelope v. George, 211 F. Supp. 657, 660 (N.D. Idaho 1962) and; (f) racially motivated conduct, Harris v. Harvey, 605 F.2d 330, 338 (7th Cir. 1979) cert. denied 445 U.S. 938 (1980); Seaton v. Sky Realty Co., 491 F.2d 634, 637-38 (7th Cir. 1974).

See Wade v. Haynes, 663 F.2d 778 (8th Cir. 1981). The Eighth Circuit surveyed the various standards applied by other circuits to determine liability for punitive damages in § 1983 cases and concluded that proof of "malicious intent" including "culpable recklessness or a willful and wanton disregard" of another's rights was the standard for recovery. Id. at 785-86.

The dissent, however, concluded that malice is something distinct from recklessness and that "actual malice" should be the basis for an award of punitive damages under § 1983. Id. at 788 (F. Gibson, J., dissenting).


22. Id. at 467. However, common-law tort rules of damages cannot always provide a complete solution to the damages issue in § 1983 cases. Carey v. Piphus, 435 U.S. 247, 258 (1978). Thus, "[i]n order to further the purpose of § 1983, the rules governing compensation for injuries caused by the deprivation of constitutional rights should be tailored to the interests protected by the particular right in question." Id. at 258-59. In addition, "[t]he rule of damages, whether drawn from federal or state sources, is a federal rule responsive to the need whenever a federal right is
vated by circumstances of violence, oppression, malice, fraud or wanton and wicked conduct on the part of the defendant. Punitive damages are intended to comfort the plaintiff for the aggravations of the original wrong, or to punish, or make an example of, the defendant for evil behavior.

The availability of punitive damages under federal civil rights litigation was first recognized in dictum in 1939, on the basis that the action sounded in tort. An action "sounds" in tort when brought not for a specific recovery of a thing but for damages only. The leading opinion was handed down in 1965, in Basista v.
In Basista, the Third Circuit justified a punitive damage award on the theory that it would serve the congressional purpose of "vindicating civil rights in civil suits." Although the court neglected to explain how punitive damages would vindicate civil rights, numerous subsequent cases have relied on Basista as authority for awarding punitive damages in section 1983 actions.

The origin of punitive damages in tort law can be attributed to a number of rationales: "redressing affronts to personal feelings not susceptible of measurement, financing deserving litigation where only small compensatory damages can be expected, diverting [a] plaintiff['s] desire for revenge into peaceful channels, and serving as a punishment for and deterrence from socially disapproved conduct." Generally, something more than mere negligence is required for punitive damages. Circumstances of aggravation or outrage, such as spite or malice, or a fraudulent or evil motive on the part of the defendant, or such a conscious and deliberate disregard of the interests of another are required before the conduct may be characterized as willful or wanton. The majority view is that negligence is not enough to justify an award of punitive damages, even though it may be so extreme in degree as to constitute gross negligence. Under the minority view gross negligence, or a conscious indifference to consequences, justifies an award of punitive damages. In either case, the theory behind punitive damages will not allow an award where a defendant has made an innocent mistake.

Originally, in an action based upon malice it was necessary to prove actual malice, meaning spite, hatred, ill will or evil intentions. However, the tendency to punish culpable behavior was such that rigid proof of actual malice gave way to the requirement of proof of "legal" malice, which included "wantonness or the will-

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29. 340 F.2d 74 (3d Cir. 1965).
30. Id. at 86.
31. See, e.g., Konczak v. Tyrrell, 603 F.2d 13, 18 (7th Cir. 1979); Cochetti v. Desmond, 572 F.2d 102, 105 (3d Cir. 1978); Stengel v. Belcher, 522 F.2d 438, 444 n.4 (6th Cir. 1975); Stolberg v. Board of Trustees for the State Colleges of Conn., 474 F.2d 485, 489 (2d Cir. 1973); Cook v. City of Miami, 464 F. Supp. 737, 739 (S.D. Fla. 1979).
32. Riley, supra note 26, at 199 (citing Roginsky v. Richardson-Nerrel, Inc., 378 F.2d 832 (2nd Cir. 1967)).
34. Id. at 9-10.
35. Id. at 10.
36. Id.
37. Id. See also Riley, supra note 26, at 201 (generally, punitive damages are not given as a matter of right, but as a matter of grace or gratuity).
38. Riley, supra note 26, at 200.
ful disregard of the rights of others.\textsuperscript{39} As noted in \textit{Amos v. Prom}:

The rule would seem to be: exemplary damages may be awarded where defendant acts maliciously, but malice may be inferred where defendant's act is illegal or improper, where the nature of the illegal act is such as to negative any inference of feeling toward the person injured, and is in fact consistent with a complete indifference on part of the defendant, liability for exemplary damages is not based upon the maliciousness of the defendant but is based, rather upon the separate substantive principle that illegal or improper acts ought to be deterred by the exaction from the defendant of sums over and above the actual damage he has caused.\textsuperscript{40}

In other words, malice will be implied where the defendant's actions evidence an unreasonable indifference to the rights of another.

The principle theory behind an award of punitive damages is that it will serve to punish and to set an example which will deter similar conduct in the future.\textsuperscript{41} Therefore, it is usually the defendant's state of mind that justifies an award of punitive damages, rather than any outward conduct.\textsuperscript{42} Consequently, courts have used a number of terms to describe the kind of mental state required, including: "maliciousness," "reckless," "oppressive," "evil," "wicked," and "wanton misconduct."\textsuperscript{43} All of these terms apparently refer to the same underlying culpable state of mind.\textsuperscript{44} Further, courts have not seemed particularly concerned with any differences that might be found between these terms.\textsuperscript{45} Thus, it appears that any term which describes misconduct coupled with a bad state of mind will describe a case for a punitive award.\textsuperscript{46}

Professor Dobbs has suggested that there are a few cases which can be read as justifying punitive damage awards against a defendant who commits some serious abuse of privilege or power, even without a guilty state of mind.\textsuperscript{47} He suggests that allowing an award of punitive damages on the basis of such an abuse, rather than on the basis of the defendant's state of mind, would be en-

\textsuperscript{39} Id.
\textsuperscript{40} Amos v. Prom, 115 F. Supp. 127, 136-37 (N.D. Iowa 1953).
\textsuperscript{42} Id.
\textsuperscript{43} Id.
\textsuperscript{44} Id.
\textsuperscript{45} Id.
\textsuperscript{46} Id.
\textsuperscript{47} Id. at 206-07. See also Harris v. Harvey, 605 F.2d 330, 340 (7th Cir. 1979) (the court justified a punitive damage award against a Wisconsin county judge on the theory that there had been "a serious abuse of judicial power").
tirely consistent with the idea that punitive awards should serve
the purpose of encouraging suit by the plaintiff as a “private attor-
ney general” on issues of special importance.48 Yet, despite the
frequency with which the doctrine of punitive damages has been
applied, no definite rule for awarding or denying them has
evolved.49

United States Supreme Court Decisions

In Monroe v. Pape, the Court spoke of interpreting section 1983
against the “background of tort liability.”50 The Court also noted
that section 1983 was intended to prevent governmental “neglect”
in the enforcement of fourteenth amendment rights by providing a
remedy to a party deprived of constitutional rights by an official’s
abuse of office.51 However, the Court discussed neither the rela-
tionship between tort liability and section 1983 liability, nor what,
if any, state of mind was necessary for a punitive damage award
under section 1983.52

The Court has never expressly held that punitive damages are
available in section 1983 actions.53 Nevertheless, lower federal

49. Riley, supra note 26, at 201.
50. 365 U.S. at 187.
51. Id. at 180.
52. See id. The Court held that since § 1983 does not contain the word “will-
fully,” and since § 1983 imposes civil liability rather than criminal sanctions, there is
no requirement for showing a “specific intent to deprive a person of a federal right”
On its face, § 1983 is silent about the proper basis of liability; it speaks only of a
defendant subjecting a plaintiff, or causing a plaintiff to be subjected to, a constitu-
tional violation. See note 14 and accompanying text supra.
ratt v. Taylor, 451 U.S. 527 (1981), the Court was confronted with the question of
whether negligence constituted an offense sufficient to invoke liability under § 1983.
Id. at 529. P arratt involved a § 1983 action brought by a prison inmate against a
warden and the prison hobby manager for their alleged negligence in causing the
loss of certain hobby materials ordered by mail. The plaintiff alleged that the de-
defendants deprived him of property without due process of law. Id. at 529. The dis-
trict court granted the plaintiff’s motion for summary judgment, holding that
negligence can be a basis for a § 1983 action, and the Eighth Circuit affirmed in a per
curiam order. Id. at 529-31.

The Supreme Court ruled against the plaintiff on the due process claim. Id. at
533-34. However, the Court indicated that § 1983 does not contain an independent
state-of-mind requirement for compensatory damages, suggesting that the language
and legislative history of § 1983 do not limit its scope to coverage of intentional depr-
vivations of constitutional rights. Id. at 534. Instead, the Court held that there are
only two requirements for an “initial inquiry” into § 1983 liability. First, whether
the conduct complained of was under color of state law and second, whether the
conduct deprived a person of fourteenth amendment or federal statutory rights,
privileges, or immunities. Id. at 535. Finally, the Court concluded that negligent
conduct could be a proper basis of liability in § 1983 cases. Id. at 532-35. However,
courts often have allowed the recovery of punitive damages in such actions. Without deciding the issue, the Court has suggested a standard for the award of punitive damages under section 1983. In *Carey v. Piphus*, the Court indicated, in a footnote, that malicious intent on the part of the defendant is a prerequisite for an award of punitive damages. Reliance on this, however, would call for a very narrow reading of *Carey* because the Court altogether avoided the question of whether punitive damages are even proper under section 1983:

Although we imply no approval or disapproval of any of these cases [allowing punitive damages for 1983 violations] we note that there is no basis for such an award in this case. The District Court specifically found that petitioners did not act with a malicious intention to deprive respondents of their [constitutional] rights or to do them other injury. . .

Rather, the district court in *Carey* found that the defendants should have known that their conduct would violate procedural due process. The Supreme Court allowed an award of compensatory damages on the basis that the defendants should have known that they were violating the plaintiffs' rights. Apparently, however, a failure to know what one should know, while sufficient to support an award of compensatory damages, does not constitute malice and will not support an award of punitive damages under *Carey*.

Prior to *Carey*, the issue of punitive damages in section 1983 cases had been addressed only peripherally by the Court. In a separate opinion in *Adickes v. S.H. Kress & Co.*, Justice Brennan stated: "To recover punitive damages, I believe a plaintiff must show more than a bare violation of § 1983. On the other hand, he need not show that the defendant specifically intended to deprive him of a recognized federal right. . ." In *City of Newport v. Fact Concerts, Inc.*, in which the Court held that a municipality cannot

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54. See note 21 and accompanying text supra.
55. *Id.* at 257 n.11, construed in *Wade*, 663 F.2d at 786-89 (F. Gibson, J., dissenting).
56. *Id.* at 257 n.11.
58. *Id.* at 251.
59. *Id.* at 267.
60. See *id.* at 266-67. But cf. notes 111-24 and accompanying text infra.
62. *Id.* at 233 (Brennan, J., concurring in part and dissenting in part).
be held liable for punitive damages under section 1983, Justice Blackmun noted:

Under ordinary principles of retribution, it is the wrongdoer himself who is made to suffer for his unlawful conduct. If a government official acts knowingly and maliciously to deprive others of their civil rights, he may become the appropriate object of the community's vindictive sentiments. . .. A municipality, however, can have no malice independent of the malice of its officials. Damages awarded for punitive purposes, therefore, are not sensibly assessed against the governmental entity itself.63

Circuit courts have struggled with the issue of punitive damages within these vague confines established by the Court. While it appears to be clear that municipalities cannot be held liable for punitive damages under section 1983, it is far from clear what behavior the "malice" standard referred to in Carey requires. Therefore, the Court's decision in Wade v. Haynes64 is necessary to set a standard for the proper basis for an award of punitive damages under section 1983.

The Eighth Circuit

The Eighth Circuit has not unanimously agreed upon the appropriate basis for the award of punitive damages in section 1983 actions. Specifically, the judges disagree on the question of whether implied malice is an appropriate basis for an award of punitive damages. According to the majority of judges, malicious conduct includes both actual and implied intent, and where either is established punitive damages are recoverable under section 1983.65

In Guzman v. Western State Bank of Devils Lake,66 the Eighth

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Circuit recognized that there may be circumstances where bad faith may be found under section 1983 even though a defendant acts pursuant to a presumptively valid statute. In such circumstances punitive damages are recoverable. "A person may feel he is pursuing his legal rights but, where his acts are oppressive and in reckless disregard of another person's constitutional rights, he can still be liable under § 1983 for his misconduct."67 The Eighth Circuit concluded that punitive damages are appropriate in section 1983 actions "where the defendant exhibits oppression, malice, gross negligence, willful or wanton misconduct, or a reckless disregard for the civil rights of the plaintiff."68

In Guzman, the Eighth Circuit upheld an award of punitive damages against a seller and a bank vice president for an ex parte attachment and seizure of the plaintiffs' mobile home and car. The evidence showed that in September of 1970, the plaintiffs purchased a mobile home from the defendant seller, executing a retail installment contract and security agreement. The defendant seller then sold the contract to the defendant bank, and the bank subsequently advanced additional funds to the plaintiffs and added the plaintiffs' car to the security agreement. Shortly after occupying the mobile home, the plaintiffs relayed numerous complaints to both defendants regarding defects in the unit's windows and doors. These defects permitted cold air to penetrate the mobile home and caused the plaintiffs to expend excessive amounts of money for propane fuel to heat the home during 1970-71.69

In January 1971, the plaintiffs fell behind in their installment payments. The bank offered to use whatever influence it had in contacting the mobile home manufacturer and seller in an effort to have the defects cured. Both the seller and the manufacturer attempted to correct the problems during the summer of 1971, but were not successful. The plaintiffs continued to make late or partial payments and in some months made no payments at all.70

In May, 1972, the bank notified the plaintiffs that their mobile home and car would be repossessed if payment to cover past due amounts was not received immediately. No further action was taken until November 1972, when the bank sent a registered letter to the plaintiffs. The plaintiffs refused to accept that letter but

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67. 540 F.2d at 951. 68. Id. at 953. 69. Id. at 950. 70. Id. Circuit found the North Dakota preattachment statute, N.D. CENT. CODE § 32-08 (1976), unconstitutional. 516 F.2d at 133. See note 74 and accompanying text infra.
they did make a payment on November 28, 1972. Three months later, without any further attempt to contact the plaintiffs or give them notice, the bank filed an action in a North Dakota state court seeking a money judgment for the balance due on the mobile home contract and the note on the car. The vice president of the bank, acting pursuant to North Dakota prejudgment attachment statutes, filed a bond and an affidavit seeking attachment and seizure of the secured property. The vice president delivered the warrant of attachment to the sheriff and, together with the seller, they went to the plaintiffs’ residence. Although neither of the plaintiffs were at home, Mrs. Guzman came promptly after receiving a telephone call at work from the sheriff. When Mrs. Guzman arrived home, the vice president refused her request for more time to make the late payments. The sheriff then seized the plaintiffs’ car and directed the seller to remove the mobile home. The other plaintiff, Mr. Guzman, was at work during all of this and was unaware of what happened until he arrived at the site of his former home late in the afternoon. At that time, the sheriff served the warrant of attachment on Mr. Guzman.\footnote{\textit{Id.} at 950-51.}

The court focused on certain facts in concluding that the defendants had acted oppressively, and that an award of punitive damages was appropriate.\footnote{\textit{Id.} at 952.} These facts included that:

1. the bank voluntarily created a duty to aid the plaintiffs, and the plaintiffs relied on the help which the bank committed itself to provide, and the bank failed to fulfill that duty;
2. after agreeing to help the plaintiffs and gaining their trust and confidence, the defendants conspired to seize the plaintiffs’ mobile home and car without giving them any notice;
3. the defendants seized the plaintiffs’ mobile home in the dead of a North Dakota winter;
4. in addition to their home, the defendants seized the plaintiffs’ car, which they needed for their jobs;
5. the verified summons and complaint, signed by the vice president, upon which the warrant of attachment was based, were false; and
6. the bank refused to give the plaintiffs additional time to pay the overdue balance once the warrant of attachment was obtained.\footnote{\textit{Id.} at 953-54.}

The court also noted that, although the defendants could not be
held liable for failing to appreciate the fact that the North Dakota attachment statute had subsequently been held unconstitutional, they were nonetheless held accountable for the oppressiveness of their conduct under the circumstances. Where a plaintiff asserts a denial of constitutional rights under section 1983, a defendant’s claim of good faith immunity due to reliance on a presumptively valid statute “must be considered in light of not only the sincerity in his belief that what he was doing was right, but the reasonableness of his actions in the circumstances.” Therefore, in addition to the strong public policy against forcibly ejecting a person from the home and notwithstanding a good faith belief that the defendant is acting pursuant to a presumptively valid statute, where it is obvious that a defendant’s conduct will oppressively harm another person, and the defendant acts with reckless disregard of that person’s constitutional rights, malicious intent will be implied and an award of punitive damages will be appropriate.

In Wade v. Haynes, the Eighth Circuit adopted the view that punitive damages are available in section 1983 actions upon a showing of malicious intent or recklessness. The Eighth Circuit allowed an award of punitive damages against a prison guard who placed a dangerous prisoner, Thompson, in the plaintiff’s and another prisoner’s cell. Thompson and the other prisoner harassed and sexually assaulted the plaintiff. The record showed no evidence that the guard harbored any spite or ill will against the plaintiff. However, the Eighth Circuit held that “deliberate intent may be predicated on factual circumstances which are so egregious and reckless that the natural consequences of the actor’s conduct implies the requisite malicious intent to do wrong.” In Wade, the court indicated that the guard knew, or should have known, that the plaintiff would likely be assaulted when Thompson was placed in his cell.

74. Id. at 952-53. The factors the Eighth Circuit focused on in declaring the preattachment statutes unconstitutional were: “the lack of a requirement that a summary procedure be instituted only to avoid removal, destruction, or concealment of property or of the creditor’s proprietary interest therein, and the lack or need for summary procedure in this case, and...failure to recognize the obvious detrimental impact upon the family involved...” Id. at 952.
75. Id. at 953.
76. Id. at 952.
77. Id.
78. 663 F.2d at 786.
79. Id. at 781.
80. Id. at 786.
81. Id.
82. Id.
The cellblock the plaintiff and the other prisoner were on was an administrative segregation unit. The court noted that, as the plaintiff alleged, the standards of the American Correctional Association recommended single unit housing on such cellblocks. Furthermore, a reformatory guard testified at trial “that experience and common sense dictated” that general population inmates, such as Thompson, and inmates who had been housed in a special treatment unit, such as the plaintiff, be segregated. The evidence also showed the guard knew that Thompson had previously been separated from the general population for his own safety and the safety of others. The guard made no effort to check whether another cell was available before he put Thompson into the cell in which the plaintiff and another inmate were already located. Finally, the guard knew that a prisoner had been beaten to death during his shift on the same cell block only a few weeks before.

Under these circumstances, the Eighth Circuit concluded that the guard’s conduct was reckless, constituted a callous disregard for the safety of prisoners in his care, and violated the plaintiff’s right to be free from cruel and unusual punishment. The guard’s callous disregard of the plaintiff’s safety allowed him recklessly to expose the plaintiff to inhumane treatment. This callous disregard and accompanying reckless conduct constituted the actionable wrong, despite the fact that the defendant harbored no ill will against the plaintiff. Thus, the defendant’s wrong was part and parcel to the actual assault, in the same sense as if the defendant had committed the harm himself, which therefore justified the award of punitive damages. In other words, there was a direct causal connection between the guard’s action and the plaintiff’s injury.

FACTS AND HOLDINGS
Branchcomb v. Brewer

Ronald Branchcomb, a prison inmate, brought a section 1983

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83. Id. at 780. The record also showed that the plaintiff had previously spent some time in the reformatory’s special treatment unit. The special treatment unit is used for segregating those inmates susceptible to physical abuse from members of the general population. Id.
84. Id. at 781.
85. Id.
86. Id.
87. Id. at 782.
88. Id.
89. See id. at 782.
90. 683 F.2d 251 (8th Cir. 1982).
action against three prison officials, the director of security and Branchcomb's counsellor at the Iowa State Penitentiary. Branchcomb alleged that his fifth and eighth amendment rights had been violated when the prison officials permitted him to be exposed to fellow inmates who assaulted and raped him.

Branchcomb was twenty-one years old in 1978. He had been an Iowa prison inmate since 1975. On April 25, 1978, he was transferred from the Iowa State Men's Reformatory at Anamosa, to the Iowa State Penitentiary at Fort Madison, an institution generally inhabited by older and more hardened criminals. Shortly after his arrival, he was placed in protective custody at his own request. In May, Branchcomb requested to be sent back to the Iowa State Men's Reformatory, but heard nothing about it. In June, Branchcomb asked to be let out of protective custody and was released back into the prison's general population and began work in the kitchen. Three days after the kitchen job began, three inmates forcibly tattooed Branchcomb with the initials "ISPF" on his buttocks, and held him down and pulled hair out of his chest. About a week later, during work, two inmates who worked with Branchcomb in the kitchen took him into a room behind the dishwasher and raped him. Two days later, they did it again. Thereafter, Branchcomb reported the incidents to his counsellor and, within two days, he was sent back to Anamosa. Although one of Branchcomb's assailants was on record for having previously committed a homosexual rape on another inmate, none of the defendants were charged with personal knowledge of the inmate's file which contained this information.

The district court entered judgment for the three officials and dismissed Branchcomb's amended complaint against the director of security and Branchcomb's counsellor on the basis that the proper statute of limitations had run. After oral argument, the

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91. U.S. CONST. amend. V. The fifth amendment provides in part: "No person shall be . . . deprived of life, liberty, or property, without due process of law. . . ." Id.
92. U.S. CONST. amend. VIII. The eighth amendment provides: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." Id.
93. 669 F.2d 1297, 1297-98 (8th Cir. 1982).
94. 683 F.2d at 252-53. The court noted that inmates living in protective custody have more secure living quarters, and that guards generally accompany them wherever they go. Id. at 253.
95. Id. The record did not indicate what happened to the request, except that it was never acted on one way or the other. Id.
96. Id. at 253-54.
97. Id. at 255. The district court held that Branchcomb's amended complaint was filed more than two years after the injury and that it was barred by the two-
Eighth Circuit remanded the action as to the three officials to the district court with directions to make more specific findings as to their state of mind. The district court made additional findings and held that the three defendants had not been deliberately indifferent to Branchcomb's constitutional rights. The Eighth Circuit affirmed as to the three officials, but vacated the order which dismissed the complaints against the director of security and Branchcomb's counsellor by ruling that the statute of limitations had not run.

Harris v. Pirch

Brenda Harris brought a section 1983 action against Paul Pirch, Sheriff of Johnson County, Missouri, and his Deputy Sheriff, Lawrence Kipping. Harris alleged that her constitutional rights had been violated when the defendants had her forcibly taken to a mental health center for observation and testing, which could possibly have resulted in involuntary commitment.

The emergency provision of Missouri's civil commitment statute which was in effect at the time of Harris' commitment, provided in pertinent part:

[A] peace officer may take, a person into custody for evaluation and treatment for a period not to exceed ninety-six hours only when . . . [the] peace officer has reasonable cause to believe that such person is suffering from a mental disorder and presents a likelihood of serious physical harm to himself or others which is imminent unless immediately taken into custody. . . . [and the peace officer shall] complete an application . . . which shall be based upon his own personal observations. . . .

On August 12, 1979, Deputy Kipping, while on duty, received a telephone call from Robert Harris stating that his ex-wife, Brenda Harris, had taken some pills and that she was going to kill herself. Kipping telephoned a local judge for advice. Kipping told the judge he previously had been summoned to the Harris home for a

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96. 683 F.2d at 252.
99. Id. at 252.
100. Id. at 255-56. The Eighth Circuit held that the proper statute of limitations for § 1983 actions in Iowa is the five year period prescribed in Iowa Code § 614.1(4), covering actions not specifically covered in other statutes of limitations. Id. at 255, citing Garmon v. Foust, 688 F.2d 400 (8th Cir.) (en banc), cert. denied, 102 S.Ct. 2283 (1982).
101. 677 F.2d 681 (8th Cir. 1982).
102. Id. at 682.
103. Id. at 684.
family dispute in which Brenda had allegedly tried to kill her ex-husband and his girlfriend, and that he had been informed that Brenda had been hospitalized six months earlier for a drug overdose. The judge offered to hold a civil commitment hearing but Kipping declined because of the urgency of the situation. The judge advised Kipping to telephone the prosecuting attorney and a psychiatric social worker. Kipping was not able to contact the prosecuting attorney but did discuss the situation with a psychiatrist, who told him that if he had reason to believe Ms. Harris was dangerous to herself, she would need to be evaluated.104

Thereafter, Kipping arranged for ambulance service and went to the Harris home to get Harris. Kipping testified that when he arrived Harris was upset and told him that she had only taken her prescription drugs, showing him a partially empty prescription vial. After being at the home for approximately ten minutes, Kipping made a determination that Harris had overdosed and decided to have her taken to a mental health center for observation, testing and possible commitment. Some time before Harris was taken to the center, the ambulance driver informed Kipping that her vital signs were normal. Harris was not accompanied by a police officer to the center, and the application form for emergency commitment, required under the Missouri statute, was not filled out. Harris was examined and released after a thirty-minute stay during which the examining doctor found no evidence of drug abuse or psychiatric symptoms.105 Harris subsequently filed her section 1983 action against Pirch and Kipping, alleging generally that her constitutional rights had been infringed by the arrest and involuntary commitment.106

The district court entered judgment upon a jury verdict finding Pirch and Kipping liable for both compensatory and punitive damages under section 1983.107 On appeal, the Eighth Circuit reversed as to both defendants.108 The court held that Pirch could not be liable absent evidence of a causal connection between himself and the commitment.109 Further, the court held that Kipping was immune from liability because he acted in good faith and had reasonable grounds to believe that his actions were necessary to protect

104. Id. at 683-84.
105. Id. at 684.
106. Id. at 685.
107. Id. at 682. The district court entered a $5,000 compensatory and a $25,000 punitive damage award against Sheriff Pirch. Compensatory damages in the amount of $10,000 and $50,000 in punitive damages were entered against Deputy Kipping. Id.
108. Id. at 689.
109. Id. at 686.
Pellowski v. Burke

Under Minnesota law, a landlord who forcibly evicts tenants is guilty of a misdemeanor. The common law of Minnesota permits a landlord to use self-help to regain leased property from a tenant in possession when the landlord is entitled to possession and the means of entry are peaceable. However, the Minnesota Supreme Court has narrowly circumscribed this right. Landlords must resort to judicial process in order to obtain an eviction.

Plaintiffs Daniel and Deborah Pellowski brought a section 1983 action, on behalf of themselves and their two children, against the defendants, three St. Paul police officers. The Pellowskis claimed that their due process and equal protection rights were violated when the police officers allowed them to be unlawfully evicted from their leased home.

The Pellowskis moved into a rented apartment in October 1976. In March 1977, the landlord instituted an unlawful-detainer action against the Pellowskis for nonpayment of that month's rent. A settlement was reached, with the Pellowskis agreeing to pay the rent for March and the landlord promising to inspect their apartment for needed repairs. During the pendency of the unlawful-detainer proceeding and prior to settlement, the Pellowskis received a second notice to vacate the apartment. The next month, the Pellowskis paid part of the rent for April.

On April 29, 1977, Mrs. Pellowski was informed by one of the landlord's property managers that they had to vacate their apartment by midnight on April 30, 1977. Shortly before midnight that evening, the property manager appeared at the Pellowskis' apartment door demanding that they leave immediately. When they refused, the manager called the police for the purpose of removing the Pellowskis from the apartment.

The police arrived at the apartment a few minutes after mid-
night, accompanied by the manager. The police officers admitted to the Pellowskis that they had no search warrant or court order authorizing them to enter the apartment. When the Pellowskis refused to open the door, the manager kicked the door down while the police officers looked on. The officers followed the manager into the apartment as the Pellowskis' belongings were moved out of the apartment and onto the building's front yard by the manager and other tenants. While in the apartment, one of the police officers spoke over the phone with the Pellowskis' attorney, who advised the officer that the eviction was unlawful. The Pellowskis filed a section 1983 action alleging that the police officers failed to act while a misdemeanor was being perpetrated in their presence. The Pellowskis sought both compensatory and punitive damages under section 1983.

The district court entered judgment upon a jury verdict for the Pellowskis, and awarded compensatory and punitive damages against all three police officers. On appeal, the Eighth Circuit affirmed, ruling that the Pellowskis' civil rights had been violated. In so doing, the language of the court's opinion implied that gross negligence may be a basis for an award of punitive damages under section 1983.

**ANALYSIS**

In *Branchcomb v. Brewer*, the Eighth Circuit held that for an inmate to recover damages from prison officials for their failure to protect him from assault and rape by fellow inmates, something more must be shown than mere inadvertence or negligence. Specifically, an inmate “must show the defendants were deliber-

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119. *Id.* The officer who spoke to the Pellowskis' attorney was later identified as Officer Garvey. *Id.* at 634. The dissent found this fact distinguished Garvey's state of mind from that of the other officers and justified an award of punitive damages against Garvey. *Id.* at 635-36 (J. Gibson, J., dissenting). See notes 164-69 and accompanying text, infra.
120. 686 F.2d at 631-32, 635.
121. *Id.* at 632.
122. *Id.* Plaintiffs were awarded $300 in compensatory damages, and $1,000 in punitive damages. *Id.*
123. *Id.* at 632, 634.
124. *Id.* at 634-35. The Eighth Circuit noted that the jury apparently found that the defendant officers' conduct constituted, at a minimum, gross negligence, and that there was sufficient evidence for a jury reasonably to make such a finding. *Id.* at 635. However, the Eighth Circuit also noted: “While, in viewing the evidence introduced at trial, we might think that defendants' conduct did not warrant an award of punitive damages, we may not substitute our views for those of the jury.” *Id.*
125. 683 F.2d 251 (8th Cir. 1982).
126. *Id.* at 252.
ately indifferent to his constitutional rights, either because they actually intended to deprive him of some right, or because they acted with reckless disregard of his right to be free from violent attacks by fellow inmates."  

A year earlier, in Wade v. Haynes, the Eighth Circuit held that “deliberate intent may be predicated on factual circumstances which are so egregious and reckless that the natural consequences of the actor's conduct implies the requisite malicious intent to do wrong.” Thus, Branchcomb indicates that the Eighth Circuit is adhering to its definition of malicious conduct as including both actual and implied intent, and that this is the standard on which an award of punitive damages is to be based in section 1983 actions.

At first blush, the factual circumstances in Branchcomb and Wade appear so similar that the Eighth Circuit's decision to allow an award of both compensatory and punitive damages in Wade, and its decision to deny recovery of either compensatory or punitive damages in Branchcomb, seem inconsistent. In both cases, it seems the plaintiffs were young “pretty boys” who had been separated from the prisons' general populations to protect them from other inmates. They were both placed in situations with other dangerous prisoners which resulted in beatings and sexual attacks. However, there is an important distinction between the cases.

In Wade, the Eighth Circuit held that the defendant knew, or should have known, of the great potential for assault when he placed a dangerous prisoner in the plaintiff's cell. In Branchcomb, the Eighth Circuit held that there was no indication the prison officials knew, or had any reason to know, of the likelihood that the plaintiff would be assaulted while working at his job in the kitchen. The distinction is one of "personal knowledge, or circumstances warranting such," and is essential to the Eighth

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127. *Id.*
128. 663 F.2d 778 (8th Cir. 1981).
129. *Id.* at 786.
130. 683 F.2d at 254; 663 F.2d at 780. At the time of the assault Wade was 18 years old and weighed approximately 130 pounds. “Pretty boy” is a term used to describe a young, first-time offender who is small in stature. See Branchcomb, 683 F.2d at 252-54; Wade, 663 F.2d at 780.
131. 683 F.2d at 253; 663 F.2d at 780-81.
132. 663 F.2d at 786.
133. 683 F.2d at 254. However, the court did note: “Obviously a system that required a full review of all relevant files before assigning a 'pretty boy' to a job alongside a rapist would be advisable. But we cannot say that the District Court clearly erred in failing to ascribe that institutional default to a reckless or callous attitude towards plaintiff on the part of any of the three named defendants.” *Id.*
134. This phrase, while not explicitly used by the Eighth Circuit, appears to em-
Thus, where a prison official has personal knowledge of a potentially dangerous situation, and acts in contradiction to what that knowledge would lead a reasonable person to do, malice will be implied. Therefore, the official will be treated as if there was, in fact, a personal, deliberate intent to do wrong.\textsuperscript{133} To use the words of the court in \textit{Wade}, malice will be implied where a prison official's acts are "reckless" and in "callous disregard" of a known danger.\textsuperscript{136} However, the court will not find malice where a prison official does not have knowledge of a dangerous situation, and there is no evidence to indicate that the official had reason to know. In \textit{Branchcomb}, the fact that the prison official did not have knowledge that the prisoner's assailant was dangerous, and the fact that the decision to give the plaintiff his job in the kitchen was made by an unnamed work supervisor, led the Eighth Circuit to conclude that the official's conduct did not constitute conscious "indifference" or "reckless disregard."\textsuperscript{137} The court indicated that if, in fact, the official had known that the plaintiff's assailant was dangerous, and if thereafter he had done nothing to protect the plaintiff, then the official's state of mind could well be labeled as "conscious indifference" or "reckless disregard," but those hypotheses were contrary to the facts in \textit{Branchcomb}.\textsuperscript{138}

Therefore, \textit{Branchcomb} is entirely consistent with \textit{Wade} and is, in fact, the flipside of the holding in \textit{Wade}. In both cases it is clear that personal knowledge is an essential element in the Eighth Circuit's definition of malicious intent. Where personal knowledge, or circumstances warranting such, are established, and a prison guard acts unreasonably given that knowledge, malicious intent will be implied and an award of punitive damages is appropriate.\textsuperscript{139}

The nexus between personal knowledge and unreasonable conduct was also at issue in \textit{Harris v. Pirch}.\textsuperscript{140} In \textit{Harris}, the court held for both defendants. First, the Eighth Circuit held that a supervisory police officer cannot be liable for either compensatory or punitive damages for the failure to prevent police misconduct ab-

\begin{footnotes}
\footnotetext[135]{663 F.2d at 786.}
\footnotetext[136]{Id.}
\footnotetext[137]{683 F.2d at 254.}
\footnotetext[138]{Id.}
\footnotetext[139]{See \textit{Wade}, 663 F.2d at 786.}
\footnotetext[140]{677 F.2d 681, 685 (8th Cir. 1982).}
\end{footnotes}
sent a showing of direct responsibility for the improper action.\textsuperscript{141} “What is required is a causal connection between the misconduct complained of and the official sued. Liability may be found only if there is personal involvement of the officer being sued.”\textsuperscript{142} Because the only evidence offered was a statement made in a deposition by his deputy, in which the deputy could not recall with certainty whether he had called the sheriff at the time Harris was committed, the court concluded that there was no causal connection between the commitment and the sheriff.\textsuperscript{143} More importantly, the court noted that even if the conversation had taken place, unless Harris alleged that the sheriff advised his deputy to commit Harris regardless of her condition or in contravention of the state’s emergency commitment statute, there would be no basis for liability under section 1983.\textsuperscript{144} In other words, unless a supervisory police officer actually orders and directs an action to be taken against another person which results in a deprivation of that person’s constitutional rights, there will be no section 1983 claim against the officer, let alone a claim for punitive damages.

Second, the court held that the deputy was entitled to a qualified immunity based on his good faith belief that his actions were proper and reasonable:

\begin{quote}
When a court evaluates police conduct relating to an arrest its guideline is good faith and probable cause. Thus, even though a police officer may not have chosen the wisest or most reasonable course of action, he will not be civilly liable if his conduct is based on a reasonable and good faith belief that it was necessary under the circumstances. . . .
\end{quote}

In addition to the good faith immunity, the deputy was also entitled to immunity under state law pursuant to a state statute which provided there would be: “No liability for persons responsible for commitment or detention . . . provided that such duties were performed in good faith and without gross negligence.”\textsuperscript{146}

The uncontroverted evidence in \textit{Harris} showed that: the deputy knew of Harris’ prior hospitalization for a drug overdose; Harris was upset when the deputy arrived at her home and that she became more upset when questioned about the alleged drug over-

\begin{itemize}
\item \textsuperscript{141} Id. at 685 (citing Rizzo v. Goode, 423 U.S. 362 (1976)).
\item \textsuperscript{142} Id. (citing McClelland v. Facteau, 610 F.2d 693 (10th Cir. 1979)).
\item \textsuperscript{143} Id. at 685-86.
\item \textsuperscript{144} Id. at 686.
\item \textsuperscript{145} Id. (quoting Schuer v. Rhodes, 416 U.S. 232, 245 (1974) and Glasson v. Louisville, 518 F.2d 899, 910 (6th Cir. 1975)).
\item \textsuperscript{146} Id. at 686 n.7 (citing Mo. Rev. Stat. § 202.123 (currently § 632.440 (Supp. 1982))).
\end{itemize}
dose; and Harris showed the deputy a partially empty bottle of pills.\textsuperscript{147} The evidence also showed that the deputy talked to a psychiatrist who advised that Harris be taken to the mental health center.\textsuperscript{148} In addition, prior to taking any action, the deputy discussed the situation with a judge and attempted to contact the prosecuting attorney in an effort to determine what he could do under the state statute.\textsuperscript{149} Under these circumstances, the court concluded that the deputy had acted in good faith and that he had reasonable cause to believe that Harris had attempted to overdose.\textsuperscript{150} On that basis he was immune from section 1983 liability for both compensatory and punitive damages.\textsuperscript{151} In other words, damages will only be appropriate where a police officer, acting under a state statute, has acted unreasonably or with an improper motive, and with such a disregard for another's constitutional rights that the actions cannot be characterized reasonably as being in good faith. Thus, when an officer makes a reasonable or innocent mistake while acting pursuant to a valid statute, there will be no claim under section 1983, and where there is no claim, the officer is automatically immune from liability for both compensatory and punitive damages.

The Eighth Circuit's framework for awarding punitive damages in \textit{Harris} is consistent with \textit{Branchcomb}, \textit{Guzman}, and \textit{Wade}. All of these cases can be seen as falling along a continuum, with \textit{Branchcomb} and \textit{Wade} at either extreme and \textit{Harris} and \textit{Guzman} in between:

\begin{tabular}{|c|c|c|c|}
\hline
\textbf{BRANCHCOMB} & \textbf{HARRIS} & \textbf{GUZMAN} & \textbf{WADE} \\
\hline
(no knowledge, no malice = no punitive damages) & (knowledge + reasonable mistake = no punitive damages) & (knowledge + action, even though protected by a statute, when oppressive = malice = punitive damages) & (knowledge, or circumstances warranting such, + unreasonable action = malice = punitive damages) \\
\hline
\end{tabular}

\textit{Branchcomb} falls at one end of the continuum inasmuch as the defendants had no personal knowledge of the danger the plaintiff was in, nor were there any circumstances warranting such

\textsuperscript{147} Id. at 689.  
\textsuperscript{148} Id. at 688.  
\textsuperscript{149} Id. at 688-89.  
\textsuperscript{150} Id. at 689.  
\textsuperscript{151} Id.
knowledge. The defendants could not be held responsible for failing to act to correct a situation they knew nothing about. In other words, in Branchcomb, the defendants had no personal knowledge upon which to act. In Harris, the defendant had knowledge and acted upon his knowledge. However, even though the defendant was mistaken about the plaintiff's condition, his action was both appropriate and reasonable. Thus, an award of punitive damages would not have been justifiable in either Branchcomb or Harris.

Like the defendant in Guzman, the defendant in Harris acted pursuant to a statute. However, the defendants in Guzman acted oppressively to effect their own interests, whereas in Harris, the defendant made a reasonable mistake and acted in an attempt to effect the best interests of the plaintiff. Thus, an award of punitive damages was justified in Guzman, whereas an award of punitive damages would not have been justifiable in Harris.

Harris stands in even further contrast to Wade. In Harris, the defendant had reason to know the plaintiff may have been in danger and, like a reasonable person, acted upon that knowledge in an attempt to protect the plaintiff. In Wade, on the other hand, the defendant had every reason to know he was putting the plaintiff in danger because, in effect, he created the situation which allowed for the danger and acted in complete disregard of that knowledge to the plaintiff's detriment. Obviously, the award of punitive damages was justifiable in Wade, while the same award would not have been justifiable in Harris.

In Pellowski v. Burke, the Eighth Circuit allowed an award of compensatory and punitive damages against three police officers who failed to act while a misdemeanor was being perpetrated in their presence. The court affirmed a jury verdict finding that the police officers deprived the plaintiffs of property rights guaranteed by the Constitution when they stood by and allowed the plaintiffs' landlord to have the plaintiffs unlawfully evicted from their rented home. In addition to the police of-

152. See Branchcomb, 683 F.2d at 254-55.
153. 677 F.2d at 689.
154. Id. at 684.
155. See note 73 and accompanying text supra.
156. See notes 104-06 and accompanying text supra.
157. Id.
158. See notes 87-89 and accompanying text supra.
159. 686 F.2d 631 (8th Cir. 1982).
160. Id. at 635. The court awarded the Pellowskis $300 actual damages. In addition, $100 punitive damages against each police officer was awarded. Id. at 632.
161. Id. at 635.
ficers' liability under section 1983 for their failure to enforce a state law, the officers were also guilty of a misdemeanor under applicable state law for assisting a landlord in the unlawful eviction of a tenant.\textsuperscript{162} Thus, \textit{Pellowski} indicates that the Eighth Circuit will imply the malicious intent necessary to support an award of punitive damages under section 1983 where a police officer's ignorance of the law results in a deprivation of a person's constitutional rights.

In reaching this conclusion, the Eighth Circuit first ruled that the evidence was sufficient to sustain a jury verdict, which found that the defendants' conduct constituted, at a minimum, gross negligence.\textsuperscript{163} The court noted the following facts which supported the jury award of punitive damages: first, the defendants allowed the Pellowskis to be evicted in the middle of the night while the plaintiffs' young children were sleeping in the apartment, and without knowledge of whether the plaintiffs had a place to stay; second, the Pellowskis testified that the police officers used abusive language and called them "welfare bums;" and third, the police officers made no effort to determine whether the landlord's actions were lawful.\textsuperscript{164} In addition, the record showed that even though the police officers did not know the specifics of landlord-tenant law, each officer knew that the Sheriff's Department normally handled evictions and that proper legal authority was necessary.\textsuperscript{165} The record also showed that one of the officers spoke with the plaintiffs' attorney over the telephone during the eviction and was advised that the eviction was unlawful.\textsuperscript{166} Under these circumstances, regardless of whether the police officers had personal knowledge that the landlord was acting unlawfully, malicious intent was implied because their failure to enforce a state law resulted in a deprivation of the plaintiffs' constitutional rights. Thus, ignorance of the law, by one deemed to know the law, is not a defense to liability for punitive damages under section 1983.

In his dissenting opinion, Judge John R. Gibson argued that the only police officer who could be presumed to have had actual malice was the officer who spoke with the plaintiffs' attorney and was actually told that the action was unlawful.\textsuperscript{167} Thus, he felt an award of punitive damages against this officer was appropriate.

\textsuperscript{162} \textit{See} notes 112-15 and accompanying text \textit{supra}.

\textsuperscript{163} \textit{686} F.2d \textit{at} 635.

\textsuperscript{164} \textit{Id.} \textit{at} 635 n.6. In addition, Mrs. Pellowski testified that someone threatened to throw Mr. Pellowski through the window. \textit{Id.} \textit{at} 635.

\textsuperscript{165} \textit{Id.} \textit{at} 634.

\textsuperscript{166} \textit{See} note 119 and accompanying text \textit{supra}.

\textsuperscript{167} \textit{Id.} \textit{at} 635-36 (J. Gibson, J., dissenting).
Judge Gibson further argued that there was insufficient evidence that, in fact, the other two officers actually knew the eviction was unlawful. In other words, Judge Gibson suggested that actual malice, as evidenced by uncontroverted proof of a defendant’s state of mind, is required before punitive damages may be awarded in section 1983 cases. For the dissent, malice will not be presumed where the police officers, who should have known that the landlord was breaking the law, did not in fact know. Rather, malice will only be found where there is uncontroverted proof that the officers knew that the action was illegal, in derogation of another’s constitutional rights, and yet allowed the action to continue.

The majority’s adherence to the definition of malicious intent in *Pellowski* is the more realistic approach. The majority allows punitive damages against police conduct that may not have been based on actual malice, yet was so derelict that the officers should be treated as if they did in fact intend the consequences of their actions. Certainly it is not unreasonable to expect police officers to intervene on behalf of a party who is the target of illegal action. In fact, to stand idly by and to take no action is unreasonable and evidence of a callous disregard for the rights of the individual being harmed. Thus, the nexus between unreasonable conduct and personal knowledge, established in *Wade*, appears once again in *Pellowski*. However, *Pellowski* replaces *Wade* on the extreme end of the continuum:

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... PELLowski ...
(no knowledge, but circumstances warranting such, given the defendant's status, + failure to enforce a state law = malice = punitive damages)170
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In *Wade*, the defendant had personal knowledge of the danger. In *Pellowski*, the court appears to be willing to assume the defendants had actual knowledge of the law because, by virtue of their status as officers of the law, they should have had actual

168. *Id.* at 635-36 (citing Fisher v. Volz, 496 F.2d 333, 349 (3d Cir. 1974)). 169. *Id.* at 635 (J. Gibson, J., dissenting). See also *Wade*, 663 F.2d at 786-89. 170. *Pellowski* extends the continuum—in circumstances where one is deemed to know the law, malice may be imputed regardless of personal knowledge. 171. 663 F.2d at 786.
knowledge of the law.\textsuperscript{172}

As a result of abstracting from the factual circumstances in these survey cases, it is clear that the Eighth Circuit's definition of “actual malice” continues to encompass both actual and implied intent.\textsuperscript{173} However, the consistent imprecise use of language by the Eighth Circuit may prove fatal to this definition when the Supreme Court decides \textit{Wade}. In any event, these survey cases help to further articulate this definition, in that they make it clear that “actual malice” will not be found unless there is personal knowledge, or circumstances warranting such, and the defendant acts unreasonably or with an improper motive to deprive an individual of constitutional rights. In addition, these survey cases indicate that the element of personal knowledge need not be shown by uncontroverted proof; it may be implied and the defendant will be treated as if, in fact, there was personal knowledge where the circumstances are such that it is unreasonable not to know.\textsuperscript{174}

In sum, “actual malice” will be found when a police officer fails to enforce a state law, which results in a deprivation of another's constitutional rights.\textsuperscript{175} However, “actual malice” will not be found where a police officer, acting pursuant to a valid statute, makes a reasonable mistake in an attempt to effectuate the best interests of another.\textsuperscript{176} Nor will “actual malice” be found where a prison official fails to protect another's constitutional rights, yet has no knowledge of a potentially dangerous situation, and there are no circumstances warranting such knowledge.\textsuperscript{177}

\textbf{Conclusion}

If \textit{Wade} is affirmed by the United States Supreme Court, the Eighth Circuit's delineation of what constitutes malice \textit{i.e.}, what is sufficient to support an award of punitive damages under section 1983, will become the rule for the country. This is the preferred result given the Supreme Court's holding in \textit{Monroe}, the history

\begin{itemize}
  \item \textsuperscript{172} 686 F.2d at 634. \textit{See also} Scott v. Plante, 641 F.2d 117 (3d Cir. 1981). In Scott, the Third Circuit held that, to award punitive damages, the factfinder must determine that the defendant “acted with actual knowledge that he was violating a federally protected right or with reckless disregard of whether he was doing so. . . .” \textit{Id.} at 135 (\textit{quoting Cochetti,} 572 F.2d at 106). \textit{Cf.} Screws v. United States, 325 U.S. 91 (1945) (The Court, interpreting what is now 18 U.S.C. § 242, stated that a specific intent to deprive another of a federally protected right is not necessary to constitute the “willful” violation required by the statute).
  \item \textsuperscript{173} \textit{See} notes 127-29 and accompanying text \textit{supra}.
  \item \textsuperscript{174} \textit{See} notes 170-72 and accompanying text \textit{supra}.
  \item \textsuperscript{175} \textit{See} notes 161-65 and accompanying notes \textit{supra}.
  \item \textsuperscript{176} Harris, 677 F.2d at 686, 689.
  \item \textsuperscript{177} Branchcomb, 683 F.2d at 254.
\end{itemize}
behind section 1983, and the theory behind an award of punitive damages. In *Monroe*, the Court made it clear that section 1983 was intended to give a remedy to parties deprived of constitutional rights, privileges and immunities by an official's abuse of position.\(^{178}\) The history of section 1983 also makes it clear that any person who has had rights, privileges or immunities violated has a right to a civil action for damages in a federal court against the wrongdoer.\(^{179}\) Finally, the award of punitive damages in a section 1983 case promotes the deterrent function of punitive damages by allowing for an award against conduct which may not have been based on actual malice, yet was so reckless that punitive damages are desirable in order to discourage future reckless conduct.\(^{180}\)

If *Wade* is reversed, with no explanation of what constitutes "actual" malice, then it appears that the Eighth Circuit is left with the position of the dissents in *Wade* and *Pellowski*. Thus, punitive damages would only be appropriate in section 1983 actions where there is uncontroverted proof that a defendant consciously violated another's constitutional rights. This is an undesirable result in light of *Monroe*, the history behind section 1983 and the theory behind an award of punitive damages. *Monroe* dictated that section 1983 be "read against the background of tort liability that makes a man reasonable for the natural consequences of his actions."\(^{181}\) Moreover, subsequent caselaw has made it clear that where a defendant actually knows that personal actions violate another's federally protected rights, or where the circumstances warrant such knowledge, an award of punitive damages is appropriate.

*Mary Elizabeth Phelan—'84*

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178. 365 U.S. at 180.
179. *Id.* at 178 (citing CONG. GLOBE, 42nd Cong., 1st Sess. 478, App. 50 (1871)).
181. 365 U.S. at 187. *See Smith v. Wade*, 51 U.S.L.W. 4407 (April 19, 1983) (81-1196). The Supreme Court affirmed *Wade* in a 5-4 decision. *Id.* at 4408. the majority concluded that punitive damages are appropriate in § 1983 actions "when the defendant's conduct is shown to be motivated by evil motive or intent, or when it involves reckless or callous indifference to the federally protected rights of others." In addition, the Court held that this standard applies even when the underlying standard of liability for compensatory damages is one of recklessness. *Id.* at 4414. The dissent argued that the proper standard for an award of punitive damages under § 1983 requires some degree of "bad faith" or "improper motive" on the part of the defendant. *Id.* at 4414.