

ADMINISTRATION OF JUSTICE

Case Three – Police Liability

The Traffic Accident

THURSDAY, MARCH 21 1:30 A.M.

It was a rather cool March morning in Harrisburg, Pennsylvania as Officer Bob Williams was patrolling the offices and buildings in the outskirts of the down town area of the city. Williams drove slowly around the parking lots surrounding the buildings and offices as he was checking for signs of prowlers and burglars. As he approached the buildings occupied by a furniture and mattress company, he thought he saw something near one of the buildings. Because the driveway circled around the building at a decreasing slope in this area, he drove slowly to make sure that he didn't scare anyone off and to check against the possibility of a burglary in progress. As Officer Williams drove through the parking lot he was startled when he felt his car run over something. Instinctively, he stopped the police cruiser and backed up to see what he had hit. At that moment, Williams was horrified when he realized that the object he had just run over felt and sounded like a body. Quickly stopping the car and exiting the driver's side, he saw a young man lying on the ground badly injured. Officer Williams called immediately for an ambulance and additional police assistance. Within a few minutes, the ambulance attendants arrived and carefully examined the young man, who looked about twenty-five. The unidentified unconscious victim had a beard and was dressed in a dark jacket and pants. The ambulance attendants were very concerned about the possibility of a very serious injury.

After the ambulance had taken the unidentified young man to the hospital, the investigating officers completed their reports and Officer Williams was asked by his watch Sergeant to file his report concerning the accident. In his report, Officer Williams explained that while he was checking for a possible burglary he did not see anyone standing in the road. Williams recounted that he was making a routine patrol around the furniture and mattress company when he realized that he had driven over something. When he backed the patrol car, he felt the same thing and stopped the patrol car to investigate. It was at this time Officer Williams realized he had run over a man. Williams immediately called for an ambulance and provided emergency care until the arrival of the paramedics.

THURSDAY, MARCH 21 9:15 A.M.

Local hospital personnel spent a frantic early morning with the unidentified young man whom Officer Williams had run over. The injured man regained consciousness in the emergency room long enough to murmur incoherently to the attending doctor that he had been taking a nap and asked, "what happened." Hospital personnel examined damage to the spinal cord and diagnosed a strong possibility the victim would have a permanent paralysis. Emergency room personnel also noted that the injured man had a substantially high alcohol content (.37% B.A.C.), well over the legal minimum allowed by law if he were driving a car. To complicate matters, they found no identification on the victim and consequently had no one to notify. Several local newspapers ran the story on the morning edition's front page. The hospital and police department were flooded with calls from worried people who feared the injured man could be a loved one. More conclusive identification came later in the afternoon when a prominent local politician stopped by the hospital to see if her brother had been brought in. She had been calling his apartment and became worried when she received no answer, especially since they were supposed to meet for breakfast later on the morning of the 21st.

Tracy Zerpoli was a city councilwoman with over three terms in that position. She checked the hospital and identified her brother, Sid, as the man who had been severely injured in the early hours of the morning. Zerpoli was quite disturbed by what she had learned and immediately called the police department to learn the identity of the officer and to see what kind of report he had filed. Later that day hospital personnel told her that Sid's prospects were not good. In fact, the specialist emphasized that he thought

permanent paralysis was the best they could hope for. Zerpoli was very unhappy at what she was told because her brother was her only living close family member.

Sid lived in a small rented apartment in the center of the city and routinely visited friends and lounged in local bars during the week. The evening of March 21st, Sid had visited one of his good friends named Steve. Originally, Sid had gone to Steve's to watch a baseball game on TV and have a couple of beers. They continued drinking long past the game ended and Sid started home around 12:30 a.m. According to Sid's friend they had consumed a large amount of beer the night of the accident. Steve said he wasn't too concerned about this because Sid had walked over to his place and would, no doubt, return home the same way. Steve did not think Sid could get hurt walking the short distance home.

FRIDAY, MARCH 22 8:30 A.M.

Police Chief Anderson insisted Officer Williams stop by his office later that morning even though Williams was still assigned to the "graveyard shift." Anderson wanted to talk with him about the accident and could see Anderson was visibly distressed about it. The local newspapers had given the story considerable attention, but the reporter neglected to emphasize several details that Anderson thought were essential to the department's case. First, there was no mention of the dark clothing Zerpoli was wearing to make him hard for anyone to have seen in the dark. More importantly there was no mention of the fact that Sid was highly intoxicated at the time of the accident. A reader taking the newspaper story at face value would assume that Zerpoli was simply taking a shortcut to his city apartment when a patrol officer drove too quickly around a deserted building, mowed him down, and then proceeded to make matters worse by putting the car in reverse and repeating the action. Chief Anderson asked Williams to review the details in his report one more time, and then proceeded to tell him that the department felt it was an unavoidable accident and would support him in any future litigation.

Officer Williams was exhausted physically and emotionally when he left the chief's office. Williams did not think he could go back home and sleep because the sound of his car moving over Zerpoli's body haunted him. He wondered if he would ever have any peace of mind.

Officer Williams decided that he needed to see Zerpoli and to apologize for causing his injuries. He also wanted to tell him that it was an accident - he simply didn't see him because he was laying on the pavement of the parking lot. When Williams arrived at the hospital, Tracy Zerpoli was standing near her brother's hospital room door. As soon as she realized whom Officer Williams was she yelled, "So you're the murderer." Officer Williams responded with "But he isn't dead." "He may as well be," Tracy barked back. Williams asked if he could see Sid, but Tracy refused and observed his every move with an obvious gruffness informing him that he could see her and her brother in court.

MARCH 15

Lawyers for Sid Zerpoli filed papers in Superior Court and the case of Zerpoli v. Williams was set for trial. In the civil litigation, the plaintiff asked for compensatory damages of \$4.9 million and a punitive award of \$2 million. Williams was in disbelief when the Chief told him about the lawsuit. "They are really going to sue me even though it was an accident." The Chief was also bothered by the law suit and told Officer Williams that he and the city attorney were thinking about an out of court settlement. "We could settle for a lot less than half a million and avoid the whole trial," Anderson stressed. Williams couldn't believe his ears, "why settle out of court I didn't do anything wrong." It was an unfortunate accident the guy was dead-drunk and had been lying in the parking lot in a poorly lit area.

Leaving the chief's office, Williams called on an old friend, attorney Jason Matthews. Matthews was very successful in criminal and civil litigation. Matthews told Williams to calm down and suggested they go to a quiet restaurant where he could review the nature of the litigation Williams was likely to face. Over lunch, Matthews explained that police conduct has increasingly become the subject of tort litigation. Explaining that torts were personal injuries like false arrest, invasion of privacy, and defamation, Matthews reviewed the actions typically covered by state and federal law. "Since Zerpoli is pursuing litigation in the state Superior Court, he is obviously going to sue for negligent conduct." "Under the common law," Matthews continued, "state tort actions are either intentional or negligent. Intentional torts include those situations where the police engage in voluntary acts that he/she knows are likely to produce certain physical consequences. Negligence, on the other hand, stems more from carelessness where the officer is not

certain about the outcome of his/her actions, but realizes that there is a foreseeable risk." "You," Matthews emphasized, "are probably being sued for negligence. I suspect that Zerpoli's attorney will argue that you should have been more careful and, even if you could not have seen the victim, you should not have driven over the body or object in reverse." "What isn't so clear to me," Matthews reasoned, "is why the suit includes your department. Usually, you have to establish that the department negligently employed you, didn't train you properly, or didn't provide adequate supervision. It seems to me that your situation doesn't fit here."

Williams thought for a while and observed that he had a history of driving accidents and some traffic tickets prior to his employment as a police officer. "Do you suppose that will be raised to justify the extension of the suit to the department? Matthews told Williams to try and relax as he would check into the pending law suit and defend him if need be.

APRIL 10

Chief Anderson was talking with the city attorney about the Williams case. "I think we should settle," the attorney advised. "The publicity with a case like this is going to be terrible, the cost of litigation substantial, and I don't think we can win. We don't stand a chance you know the guy will come into the courtroom in a wheelchair and how the jury will react to that. Later that afternoon, Chief Anderson talked to Officer Williams. He explained that the city wanted to settle out of court and emphasized that he thought they would lose if they went to trial. Zerpoli's just looking for a few bucks anyway and the city would rather cut its losses now than risk a huge damage award later. Anderson had some foundation for his concern about high damages. Although police in small departments are infrequently subject to civil litigation, such suits have increased and some jury decisions have exceeded one million dollars. Williams emphasized that "it simply was not my fault, Zerpoli was dead drunk and sprawled in the middle of a parking lot at 1:30 in the morning. Give me a break."

NOVEMBER 18

Several months passed before the case of Zerpoli vs. Williams and the police department came up for trial. In the interim, both sides prepared diligently. Zerpoli's attorney played on the negligence dimension and hoped that Williams's history of driving accidents would help the jury conclude that he was negligent in driving and the Police Department in hiring. If they did hire him, they shouldn't have put him behind the wheel of a patrol car. On the other side, Williams's attorney, Matthews, argued that if Zerpoli had he been sober and upright, Williams, would have seen him and been able to stop. Williams drove very slowly when patrolling the businesses and office districts near downtown. Obviously you could not take those parking lots at high speed.

The trial started with the selection of the jury. Both sides moved in quick but predictable ways. The plaintiffs struck those with relatives and friends in policing and those who admitted to driving accidents. The defense tried to stay away from elderly women, college students and those with family and friends who had been injured in car accidents.

NOVEMBER 23

The trial went on for five days. Witnesses were brought in who testified to Zerpoli's injury and who emphasized the permanence of the paralysis. Supplementing this was the testimony of physical therapists who described in great detail the difficulty Sid would have in simply taking care of routine day-to-day functions. Additionally, the plaintiffs introduced Williams's driving record, claiming that the department should not have hired him or put him in a patrol car.

Williams's attorneys countered most points and emphasized that Zerpoli was well over the legal limit for intoxication. Arguing that he was lying down in the parking lot, they emphasized that no reasonable person could be expected to look for drunks on the ground of a parking lot at 1:30 a.m. when patrolling for burglaries. On the point of Zerpoli's actual location, the two sides were in conflict. Zerpoli testified that he was crouching not lying on the ground, while Williams countered that even a crouching man would have been difficult to see.

Eventually, the case was given to the jury to decide on a verdict. The jury deliberated for two days and concluded that Officer Williams had not been negligent and rendered a verdict in the defendant's favor. Williams was relieved, however it was obvious the ordeal had taken a psychological toll on the officer. As Officer Williams approached Zerpoli on the way out of court, his attorney heard him whisper, "I wish this had not happened and I will live with this every day for the rest of my life."

**DISCUSSION QUESTIONS – Use a separate sheet of paper to answer the following questions.
WRITE THE QUESTION – FULLY EXPLAIN YOUR ANSWERS.**

1. What are the pertinent facts surrounding this incident involving Officer Williams that caused the injury which Sid Zerpoli suffered?
2. How do you feel about the officer's explanation of how the accident took place? Is it reasonable?
3. To what extent do you think Officer Williams prior driving history should be a factor?
4. Did Williams's supervisors act in a responsible fashion in how they handled this incident?
5. Should Officer Williams be held criminally responsible for the injury?
6. What facts support Zerpoli's civil suit against the police department?
7. Do you agree with the jury's verdict? If so, why? If not, what would you have done?
8. What factors contribute to these kind of civil suits against the police?
9. What impact do you think these types of cases have on society as a whole?
10. What impact do you think these types of cases have on police department's nation wide?
11. What impact do you think these types of cases have on individual citizens involved?
12. What steps should a police department follow in order to provide the best possible protection to the public from an incident of this nature from taking place?
13. What recourse do citizens have in addition to civil suits when they think they have been unfairly treated or seriously injured by police actions?