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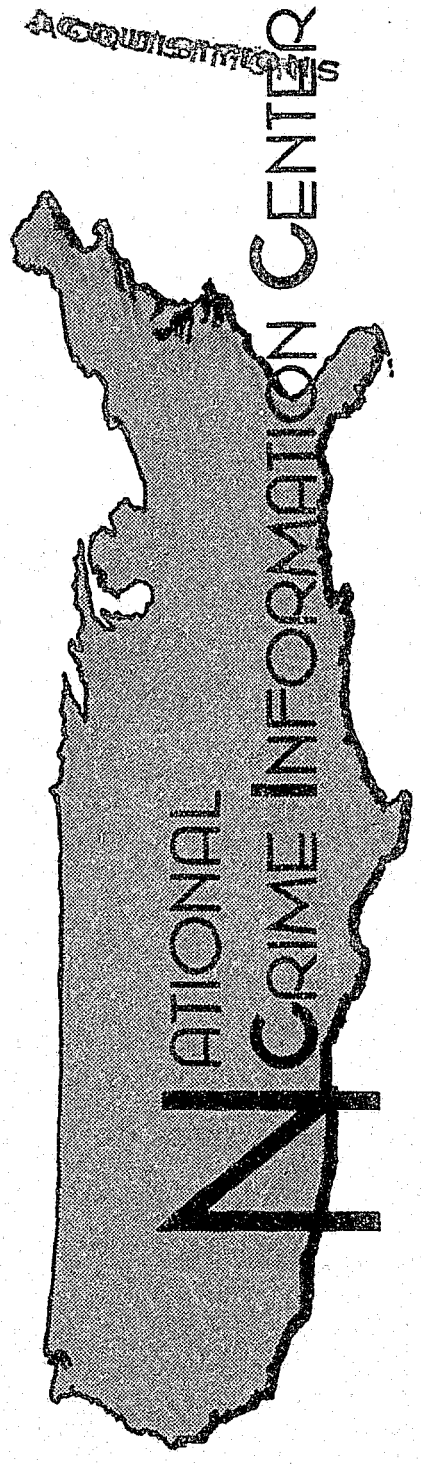

Areas of Liability for the Criminal Justice Information System Administrator

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An area of concern to law enforcement officials and criminal justice information system administrators is the liability which is imposed on them for the overall operation and maintenance of a criminal justice information system. The management of the system brings forth a very large administrative responsibility. This responsibility is continuously reviewed and defined by the courts. The types of legal liability that may result from the maintenance and dissemination of criminal justice data will be reviewed in this paper to provide insight to the administrator.

In discussing actions which might be maintained against a criminal justice agency employee for "record malpractice," a look at immunity and one's status will first be reviewed. Under the principle of sovereign immunity, the United States or any state therein cannot be sued by reason of their sovereignty. However, suits may be entertained by the United States, if specific permission has been granted by an act of Congress. An example of this is the Federal Tort Claims Act, 28 United States Code 2671, et. seq., which makes the United States liable for the negligent acts or omissions of Federal employees within the scope of their employment. Most states possess some kind of system which permits them to assume liability and allows civil suits against them also. This is normally provided via constitutional or statutory authority.

The move away from immunity and toward responsibility has taken different forms. Even though a state may have immunity and its agencies are protected from suit, its officials and employees are not protected in their capacities under the doctrine of sovereign immunity. However, there are two types of official immunity: (1) absolute immunity, and (2) qualified immunity. In an action for a common law tort, absolute immunity from suit is granted to a government official when that official performs a discretionary act within the scope of his authority, even if this act is performed with malice. Discretionary acts are basically high-level policy and planning decisions. In theory, the operation of the government depends upon its ability to make decisions on the highest level, which decisions should be free of nuisance litigation. Ministerial acts, on the other hand, are day-to-day acts of the government which carry out the decisions made on the discretionary level. Ministerial acts, which implement policy decisions, are subject to liability while discretionary acts are immune to suit. Qualified immunity is generally applicable to lower ranking officials in performing ministerial acts.

Generally, absolute immunity is not available to Federal officials as a defense in suits alleging constitutional violations, subject to those exceptional situations where it is demonstrated that absolute immunity is essential for the conduct of public business; actions of presidents, judges, and prosecutors. However, in the area of constitutional torts, the U. S. Supreme Court has recently advanced a change. In a series of opinions, the U. S. Supreme Court has ruled that government officials involved in a wide range of executive decision-making and police functions have qualified immunity

to actions for damages charging them with violations of civil rights. Note that the distinction between discretionary acts and ministerial acts is not an issue in these types of cases. Under the earlier opinions, these officials could avoid liability for a constitutional violation if they proved (1) that they held a good faith belief that their actions were lawful and (2) that this belief was objectively reasonable given the state of the law at that time. Procunier v. Navarette, 434 U.S. 555 (1978) (prison officials); Wood v. Strickland, 420 U.S. 308 (1975) (school board members); O'Connor v. Donaldson, 422 U.S. 563 (1975) (mental hospital officials); Butz v. Economou, 438 U.S. 478 (1978) (Federal government cabinet level officers); Scheuer v. Rhodes, 416 U.S. 232 (1974) (state executive officials); Pierson v. Ray, 386 U.S. 547 (1967)(police officers).

These cases had provided a framework for litigating the qualified immunity defense. The defendant was generally believed to bear the burden of pleading and proving at trial that the constitutional right at issue was not clearly established at the time of the incident and that he did not maliciously intend to cause a deprivation of constitutional rights or other injury to plaintiff, Wood v. Strickland, supra, at 321-22; Procunier v. Navarette, supra. These standards, of course, were not always easy to apply and resolution of the immunity issue has proved quite complex in some situations.

In Harlow v. Fitzgerald, 457 U. S. 800 (1982), the Court reconsidered the doctrine of qualified immunity and announced a fundamental change in its scope and application. In an attempt to allow for pretrial adjudication of the qualified immunity issue, the Court appeared to discard the subjective element of good faith, focusing instead on the state of the law at the time of the alleged constitutional violation. The Court ruled:

> Consistently with the balance at which we aimed in Butz, we conclude today that bare allegations of malice should not suffice to subject government officials either to the costs of trial or to the burdens of broad-reaching discovery. We therefore hold that government officials performing discretionary functions generally are shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known. See Procunier v. Navarette, 434 U.S. 555, 565 (1978); Wood v. Strickland, supra, 420 U.S. at 321.
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> Reliance on the objective reasonableness of an official's conduct, as measured by reference to clearly established law, should avoid excessive disruption of government and permit the resolution of many insubstantial claims on summary judgment. On summary judgment, the judge appropriately may determine, not only the currently applicable law, but whether that law was clearly established at the time an action occurred. If the law at that time was not clearly established, an official could not reasonably be expected to anticipate subsequent legal developments, nor could he fairly be said to "know" that the law forbade conduct not previously identified as unlawful. Until this threshold immunity question is resolved, discovery should not be allowed. If the law was clearly established, the immunity defense ordinarily should fail, since a reasonably competent public official should know the law governing his conduct. Nevertheless, if the official pleading the defense claims extraordinary circumstances and can prove that he neither knew nor should have known of the relevant legal standard, the defense should be sustained. But again, the defense would turn primarily on objective factors (footnotes omitted).

Litigation of the good faith defense after Harlow has revolved around the difficult questions raised by the term "clearly established law." The principle announced in Wood v. Strickland, supra, that defendants could not, as a matter of law, avoid liability where the rights were clearly established, is not diluted by Harlow. As the Court stated in Wood, at 321-22:

> The official himself must be acting sincerely and with a belief that he is doing right, but an act violating a student's constitutional rights can be no more justified by ignorance or disregard of settled, indisputable law on the part of one entrusted with supervision of students' lives than by the presence of actual malice.
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> Therefore, in the specific context of school discipline, we hold that a school board member is not immune from liability for damages under §1983 if he knew or reasonably should have known that the action he took within his sphere of official responsibility would violate the constitutional rights of the student affected....

The qualified immunity from liability based on good faith is applicable to both state and Federal law enforcement officials. Pierson v. Ray, supra; Bivens v. Six Unknown Named Agents, 456 F.2d 1339 (2d Cir. 1972); Barker v. Norman, 651 F.2d 1107 (5th Cir. 1981); Boscarino v. Nelson, 518 F.2d 879 (7th Cir. 1975). However, given the wide variety of constitutional torts which may be at issue in police misconduct litigation, one cannot expect the definition of good faith that was developed with respect to government officials, who execute functions quite different from those of police officers, to provide a satisfactory test for every police misconduct case. Indeed, the current tendency of the courts to mechanically apply the general good faith defense to all aspects of police work has led to confusion and doctrinally incorrect decisions in the lower Federal courts. Procunier v. Navarette, supra, at 568 (Steven, J., dissenting).

To illustrate how courts have looked at the question of discretionary acts, the case of Walcowski v.

Macomb County Sheriff, 236 Northwest 2d 516 (1975) should prove to be informative. The plaintiff was stopped for running a red light by officers of the defendant. A check was made of the Michigan State Police Department's Law Enforcement Information Network (LEIN) which indicated an outstanding warrant on the plaintiff for perjury, a felony. This was an error even though the plaintiff was wanted on a contempt of court cite, a misdemeanor. The plaintiff contended that if the officers had been correctly informed that there was a "misdemeanor want" as opposed to a "felony want," the officers would not have taken the plaintiff into custody. The plaintiff sued for battery, assault, false arrest, unlawful imprisonment, and defamation. The defendant, Director of the Michigan State Police Department, who maintained the computer service, appealed in this case from the lower court's refusal to drop him from the action. The court held that the "operation of police departments are governmental functions within the meaning of the statute," Michigan Statutes, Section 3.996(107), "which provides immunity from tort liability to governmental functions. Therefore, the activities of the director in overseeing the operations of a computerized criminal record system are discretionary, and he was therefore immune from this suit by operation of state law."

It can be said that the policy decision areas, i.e., planning, overseeing, and running a criminal justice information system is the exercising of discretionary acts. However, other cases have dealt specifically with the issue of what is the "scope of authority" of the government official and to what extent there can be an abuse of the same. The case of Maney v. Ratcliff, 399 F. Supp. 760 (1975), discusses this issue. The plaintiff brought the instant action against certain Louisiana law enforcement officials based on a cause of action arising under the Federal Civil Rights Law (42 United States Code 1983) challenging the manner which the defendants had used the NCIC System to locate the plaintiff. The plaintiff was arrested on three separate occasions on the basis of an NCIC entry indicating that he was wanted by authorities on a felony narcotics charge. The plaintiff was not extradited and the NCIC entry was never cleared. The Court stated "although the decision of whether to extradite is within the 'quasi-judicial' function of a state prosecutor, conduct of the Louisiana District Attorney's Office in leaving the outstanding arrest warrant entry on the FBI NCIC computer system, after having decided not to extradite the plaintiff, was not within the prosecutorial function and was outside the scope of prosecutorial immunity in a civil rights suit." Thus, the immunity which the prosecutor would normally have as a government official did not extend to an act beyond the prosecutor's scope of authority, i.e., allowing the entry to remain on file. Additionally, an issue in the Maney case was the plaintiff's alleged violation of Fourth Amendment rights. As indicated previously, the suit was being maintained under the civil rights statute, and in order to maintain this type of litigation a case must allege a deprivation of a right, privilege, or immunity which is secured by the Constitution. This alleged deprivation must be caused by a person acting under color of state law. The Maney Court found the complaint sufficient to state a cause of action for violation of the plaintiff's Fourth Amendment rights. The Court held that, under the facts as presented, although the failure to take the entry out of the NCIC computer after the first arrest did not constitute an unreasonable search and seizure, the failure to delete after the second arrest "evinced a reckless and careless disregard for the plaintiff's constitutional rights."

Harlow v. Fitzgerald, supra, makes it clear that a threshold determination in all cases in which defendants plead qualified immunity is whether the government officer was performing a "discretionary function." Barker v. Norman, 651 F.2d 1107 (5th Cir. 1981); Williams v. Treen, 671 F.2d 892 (5th Cir. 1982). Police officers and prison guards do not as a rule exercise the kind or scope of discretionary judgment exercised, for example, by presidential assistants (Harlow) or governors (Scheuer v. Rhodes, 416 U. S. 232 (1974)). Moreover, given the wide range of actions undertaken by police officers, it is not unreasonable to expect that there will be distinct differences between types of police work in terms of whether discretionary or ministerial duties are involved. Accordingly, an initial burden should be placed on the officer to demonstrate that the particular authority exercised in the case was discretionary in nature. Williams v. Treen, supra.

There are a number of situations under which a police officer who has violated someone's constitutional rights will assert a good faith defense. Easiest to analyze is the one in which an officer acts pursuant to a statute reasonably believed to be valid but later declared unconstitutional. Given the Supreme Court's rulings on the good faith defense, the officer's strongest case for reliance upon legal authority for his unconstitutional actions arises when his actions are sanctioned by a statute. Pierson v. Ray, supra, at 555.

Similarly, where the officer has in good faith secured or executed a search warrant, or has followed other court orders, he or she will normally be protected even if the warrant or order is invalid. Smith v. Martin, 542 F.2d 688 (6th Cir. 1976); Stadium Films, Inc. v. Baillargeon, 542 F.2d 577 (1st Cir. 1976). However, in McSurely v. McClellan, 697 F.2d 309 (D.C. Cir. 1982), modified on other grounds, 753 F.2d 88 (D.C. Cir. 1985), the court ruled that a prosecutor can be held liable for a search conducted pursuant to warrant if there was fraud in the procurement of the warrant or if the prosecutor should have known that the warrant was illegal or should not have been issued.

Similarly, in Briggs v. Malley, 106 U. S. 1092 (1986), the U.S. Supreme Court concluded that a law enforcement officer is entitled only to qualified, not absolute, immunity from liability in a civil rights action based on a claim that the officer caused an

unconstitutional arrest by obtaining a warrant on the basis of a complaint and affidavit that were insufficient to establish probable cause; qualified immunity is not established simply by virtue of the fact that the officer believed the allegations in the affidavit and that a judicial officer found the affidavit sufficient. In Briggs v. Malley, the Court stated that, as a matter of public policy, qualified immunity provides ample protection to all but the plainly incompetent or those who knowingly violate the law.

As to constitutional issues which continue to be raised with reference to maintenance of inaccurate or incomplete records, one needs to review the case of the United States v. Mackey, 387 Fed. Supp. 1121 (1975). In this case, the plaintiff was hitchhiking when he was approached and stopped by two police officers who made a routine NCIC check. The officers were advised that there was an outstanding fugitive warrant on the subject, and they arrested him, which they would not have done otherwise. While processing the plaintiff, an unregistered shotgun was found in a dufflebag. The plaintiff was indicted on a Federal firearms charge. Subsequently, it was determined that the fugitive warrant actually had been satisfied five months earlier, but had not been removed from the NCIC System. The plaintiff made a motion to suppress the shotgun as evidence on the basis that his arrest, which was made pursuant to an incorrect NCIC arrest warrant entry, was illegal and constituted a denial of due process under the Federal Constitution. The Court held the evidence inadmissible and that the plaintiff's arrest was equivalent to an arbitrary arrest and was actually a denial of due process. The Court stated "that a computer inaccuracy of this nature and duration, even if unintended, amounted to a capricious disregard for the rights of the defendant as a citizen of the United States. The evidence compels a finding that the Government's action was equivalent to an arbitrary arrest and that an arrest on this basis deprived the defendant of his liberty without due process of law. Once the warrant was satisfied, five months before the defendant's arrest, there no longer existed any basis for his detention and the Government may not now profit by its own lack of responsibility." It might be pointed out that in the Mackey case, the decision was made by the Court without attempting to determine the actual responsibility for the NCIC error but that this stale information did constitute an infringement of the plaintiff's rights and that this infringement was "perpetrated primarily with the assistance of a mindless automation controlled by the Government." It should be noted that in the Mackey case, the Judge mistakenly referred to an NCIC inquiry, when in fact, the inquiry and record were in the California system. However, this does not alter the basic ruling of the Court as it applies to possible liability because of state records in a computerized system.

Having looked at areas of liability with respect to immunity and subsequently constitutional areas that have been the subject of challenges involving computerized information, we now move to a third area. This area will be a discussion of the criminal justice agency's obligation to maintain accurate information. Of significant interest in this area is the case of Tarlton v. Saxbe, 507 F. 2d 1116 (1974). In this case, the plaintiff's FBI criminal record contained a number of arrests without dispositions. The plaintiff wanted these records expunged from his file. His action was dismissed in the lower court and he appealed that dismissa' On appeal, the question which was reviewed by the court was "what type of duty does the FBI have in safeguarding the accuracy of information which it has in its criminal files which can subsequently be disseminated." The court said that the FBI has "some duty" to ensure that the records which it maintains and disseminates are reasonably accurate.

It also stated that the "primary duty" for accuracy of a record is placed on the local agency who makes the arrest or conviction rather than the FBI. The court did reject the argument offered by the Government of the "passive recipient" theory in that the FBI is a mere repository for information collected and recorded by state and local agencies and thus is not responsible for any inaccuracies in that information. It should be pointed out that the Tarlton case specifically reviewed the duty of the FBI and not specifically the type of duty which would be imposed on a criminal justice agency for ensuring the accuracy of its records.

However, subsequent to Tarlton, the case of Testa v. Winquist, 451 F.Supp. 388 (1978) tends to shed some light on negligent record keeping as forming a basis for personal liability of local officials. [Although the decision is somewhat complex, it is especially relevant because it involves damage claims based on alleged deprivations of constitutional rights as well as on common law tort theories. It also involves issues of primary as well as contributory negligence resulting from record-keeping practices.] In Testa, the plaintiffs were detained overnight by East Providence, Rhode Island, police officers and charged with possession of a stolen car based on information supplied by the NCIC, and confirmed by telephone by a Warwick, Rhode Island, police officer indicating that the car the plaintiffs were driving was stolen. In fact, the car had previously been stolen in Warwick but had been recovered and subsequently sold to the plaintiffs.

The plaintiffs brought a civil damage action against the East Providence police officers for deprivation of constitutional rights (false imprisonment), pursuant to 42 USC 1983, and for state tort claims, including false imprisonment, liable and slander, trespass, and malicious destruction of property. The police officers joined the regional administrator of NCIC and the Warwick police officer as third party defendants on the grounds that these individuals had negligently failed to keep current and accurate records and had supplied erroneous information on which the police officers had relied to their detriment. Thus, if the police officers were found liable to the plaintiffs, the third party defendants should bear or share this liability under state theories of contribution and indemnity.

The third party defendants moved to dismiss the claim against them and the court denied the motion, it concluded that under the facts alleged, the defendant police officers could be found to be liable to the plaintiffs and the third party defendants could be required to share this liability because of their negligent record-keeping practices. In discussing the liability of the defendant police officers, the court said that although the officers were performing discretionary duties and were entitled to a defense of qualified immunity, this immunity could be overcome by showing that they had unreasonably relied on the NCIC computer check and the Warwick police officers confirmation as the sole basis for probable cause to detain the plaintiffs. Citing Bryan v. Jones, 530 F.2d 1210 (1976), the court said that, in Section 1983 suits for false arrest and imprisonment, the defense of qualified immunity has a reasonableness component. The police officers must show not only that their acts were nonmalicious, but also that they acted reasonably under the circumstances. If they negligently relied solely on the computer check and telephone confirmation without making further pertinent inquiries, they could be held liable. The court also ruled that the NCIC administrator and the Warwick police officer could be held jointly or severally liable for breach of a duty owed to the plaintiffs to maintain accurate and current record systems. Since it is commonplace for arresting officers to rely heavily on computer checks and police department record systems, the persons who maintain these systems have a duty to establish reasonable administrative mechanisms designed to minimize the risk of inaccuracy by requiring that the records be constantly updated. Where breach of this duty results in illegal arrest, the arrestee may have a cause of action for false arrest actionable under both state and Federal law.

The court, in discussing the various duties which should have been imposed on the administrator of the information system, indicates that a duty with respect to the maintenance of individual criminal history record information has been established by statute, 42 United State Code, Section 3771(b). This subsection, amended in 1984, now located at 42 U.S.C. 3789g (b), deals with criminal history information disposition and arrest data and states:

> "All criminal history information collected, stored, or disseminated through support under this chapter shall contain, to the maximum extent feasible, disposition as well as arrest data where arrest data is included therein. The collection, storage, and dissemination of such information shall take place under procedures reasonably designed to ensure that all such information is kept current therein; the Office of Justice Programs shall assure that the security and privacy of all information is adequately provided for and that information shall only be used for law enforcement and criminal justice and other lawful purposes. In addition, an individual who believes that criminal history information concerning him contained in an automated system is inaccurate, incomplete, or maintained in violation of this chapter, shall, upon satisfactory verification of his identity, be entitled to review such information and to obtain a copy of it for the purpose of challenge or correction."

This Section at Subsection (d) also imposes a sanction which provides that "any person violating the provisions of this section, or of any rule, regulation, or order issued thereunder, shall be fined not to exceed $10,000, in addition to any other penalty imposed by law."

It appears from the cases that have been cited, the courts have now specifically addressed the issue as to whether a criminal justice information system administrator can be held liable for the negligent mishandling of a criminal justice record. We can see that, in relation to 42 United State Code 3789g, there is a standard which is prescribed for record management and perhaps the establishment of maintenance standards for these records. It can be said that criminal justice agencies specifically have a duty to maintain records that are accurate, complete, and up to date. To ensure that legally sufficient record management is present, each administrator should ensure that there are security standards, audit standards, and personnel training standards which would allow accurate and up-to-date records and dissemination of the same.

In addition to the liability that may be imposed on an NCIC Control Terminal Officer for maintaining inaccurate or stale information, etc., in the System, the question of the liability of an agency which totally fails to utilize the System, and this failure thereby results in harm to a third party, has been posed. This type of "failure to act" could be termed as nonfeasance. Nonfeasance is defined as the "nonperformance of some act which should be performed, omission to perform a required duty at all or total neglect of duty." (Black's Law Dictionary, revised fourth edition, West Publishing Company.)

When looking at the liability of law enforcement officers with respect to their specific failure to act, one must consider the "neglect of duty issue." The general rule is that police officers owe protection to the public and not specifically to any particular individual. In most police agencies, there are specific guidelines which establish and outline the nature and responsibilities of the office or officer. To be considered in violation of these duties or willfully neglecting one's duty, the officer must be aware of the nature and responsibilities of his office. Once the officer is placed on notice of his duties, he can possibly be held liable for intentionally omitting, neglecting, or refusing to carry out these duties. For example, if there are agency rules which require that a fugitive must be entered into a state or national system and the officer fails to enter the subject, and, thereafter, harm occurs to a third party, the officer may be held liable for his negligent conduct. As to specific cases involving the nonuse of a computer information system and nonfeasance on the part of a police agency, no specific cases were noted. However, in dealing

with the "neglect of duty" issue, the most widely recognized duty of a law enforcement officer is that of requiring him to avoid negligence in his work. Society has repeatedly imposed a duty upon individuals to conduct their affairs in a manner which would avoid subjecting others to unreasonable risk of harm. This, of course, applies to law enforcement officers. If the officer's conduct creates a danger recognizable as such by him in similar circumstances, he will be held accountable to others injured as a proximate result of his conduct and who have not contributed to their own harm. These general principles are well known concepts in the law of negligence. The tort of negligence is defined as "the omission to do something which a reasonable man, guided by those ordinary considerations which ordinarily regulate human affairs, would do, or the doing of something which a reasonable and prudent man would not do." (Black's Law Dictionary, revised fourth edition, West Publishing Company.)

This could be interpreted that actions taken by a police officer in investigations and/or the apprehension of criminals must not create an unreasonable risk of injury or death to innocent persons. This creation of the risk is not in and of itself negligence; however, the law does require reasonable assessments of the likelihood of harm and will regard as negligent any act which creates a risk of such magnitude as to outweigh the utility of the act itself. Restatement (Second) of Torts §291.

Under the civil courts system, if the police officer owes no specific duty to the complainant, he will not be penalized even if the plaintiff in fact suffered some form of injury. An officer will be liable anywhere it is shown that (1) he was obliged to do or refrain from doing something and (2) the plaintiff was damaged because of the officer's failure to comply with the particular obligation or duty to train officers they employ. Administrators have been held liable where there has been a negligent breach of this duty which approximately caused an injury to the plaintiff. The negligent failure to train involves a breach of executive duty and imposes the same liability as if the administrator had participated in the actual tort. An example of this would be where a training officer fails to properly and diligently train his personnel in the proper use of the system, so as to allow them to carry out their required duties. Generally, a police administrator is not vicariously liable for the acts of the subordinate officer unless he participates in, directs, authorizes, or ratifies the misconduct of the officer. These usually involve some affirmative act by a police chief. A parallel could be drawn by looking at the case of Roberts v. Williams, 302 F. Supp. 972 (1969) where a county farm superintendent was held liable for the grossly negligent shooting of a county prisoner by an armed trustee. The trustee was furnished a loaded shotgun without training. The court held that "since the shooting in this case occurred under the most needless and avoidable circumstances, it is patent that Williams, the trustee, was thoroughly ignorant, indeed incompetent, in the handling of a firearm." The court went on to say that it was the superintendent's "duty to exercise care that Williams knew how to use the gun and could handle it safely before giving him possession of it." The negligence of the superintendent in this case combined with the negligence of Williams in mishandling the gun, produced a classic case of causation which approximately resulted in the shooting of and personal injuries to the plaintiff. It is no answer to say that Williams alone is responsible for the consequences of this negligence, but that responsibility must be shared by the superintendent because of his concurrent, tortious conduct.

More recently, in Monell v. New York City Department of Social Services, 436 U.S. 658 (1978), the Supreme Court held that municipalities are persons subject to damages and liability under 42 USC Section 1983, for violations of that act visited by municipal officials. The Court noted, however that municipal liability could not be premised on the mere fact that the municipality employed the offending official. Instead, the Court held that municipal liability could only be imposed for injuries inflicted pursuant to government "policy or custom." The Supreme Court on June 3, 1985, in the case of City of Oklahoma City v. Tuttle, 105 U.S. 2427 (1985), clarifies Monell and indicates that where municipal liability is alleged and based on a policy of inadequate training, there must be a causal connection between the policy and the constitutional deprivation, that is there must at least be an affirmative link between the training inadequacies alleged and the particular constitutional violation at issue. These two cases are illustrative of the point that liability for inadequate training, resulting in mishandling criminal and other records, is a possibility.

Even more recent is the case of Terry Dean Rogan v. City of Los Angeles, Et. Al., No. CV 85-0989 (C.D. Cal. July 16, 1987). During 1981, using false identification in the name of Terry Dean Rogan, Bernard McKandes, an Alabama state prison escapee, was arrested and later released by the Los Angeles Police Department (LAPD) on suspicion of murder. In April, 1982, LAPD officer Richard Crotsley obtained a warrant in Rogan's name, charging him with two robbery-murders. The warrant contained an alias, but none of McKandes' known physical characteristics. In May of 1982, LAPD officer Lester Slack had the warrant information entered into the NCIC Computer System (without McKandes' known physical characteristics). In July of 1982, Slack reentered the record without modification.

Sometime around November, 1982, Rogan was arrested in Michigan for resisting arrest during a trespassing dispute. An NCIC check revealed the outstanding California arrest warrant. After comparing physical characteristics, it was determined that Rogan was not the same individual named in the warrant. The warrant was automatically removed from NCIC. However, in November of 1982, Crotsley had the record reentered without modification.

During 1983 and 1984, Rogan was arrested four times based on the warrant information contained in the NCIC System. Also, in July of 1983, Crotsley again reactivated the record in Rogan's name without modification. Finally, in January of 1984, after McKandes was returned to an Alabama prison, Crotsley removed the NCIC record in Rogan's name.

Rogan, in U.S. District Court, sued the City of Los Angeles and both LAPD officers under Title 42 U.S.C. Section 1983 for damages and other relief, alleging a deprivation of his constitutional rights because of his mistaken arrests.

On cross motions for summary judgment, the Court found the City of Los Angeles to be liable, but did not find liability on the part of the officers.

1) Inasmuch as descriptive data was available but not entered, the Court determined that the NCIC record and the arrest warrant upon which it was based violated the particular description requirement of the Fourth Amendment. The principle that the inadequacy of description in an arrest warrant so as to make it lack specificity making it unconstitutional was extended to the NCIC record.

2) The Court found that the maintenance and multiple reentry of the NCIC record without modification caused Rogan to be arrested and detained without due process of law. The officers stated they did not know how to change the NCIC record. The failure of the City of Los Angeles to train its officers in the use of NCIC and, therefore, the failure to enter other descriptive data when available in spite of NCIC established standards of training was gross negligence per se. Therefore, the City of Los Angeles was liable under Section 1983.

3) The Court held that the officers had qualified immunity this time because their conduct and omissions did not violate Rogan's clearly established constitutional rights of which a reasonable person would have known. They did not know that the constitutional test of specificity in warrants applied to NCIC entries.

This decision represents a warning that the courts will not tolerate incomplete NCIC records nor the failure to train or provide adequate training in the proper use of the NCIC System. If that occurs, liability will be assessed at the appropriate and responsible levels of government.

In summation, with reference to the total nonuse of criminal justice information systems, there is no case law authority which specifically states that a system of this nature must be utilized by law enforcement agencies. This topic did not encompass all state statutory authority which might require utilization. However, it can be inferred that (1) negligent nonuse by a law enforcement officer when required by policy to utilize the system or (2) inadequate training by an administrator of an officer who must use the system pursuant to policy, may result in a finding by a court that breach of a specific duty has occurred and the persons involved are liable for damages under the general principles of tort law. Furthermore, based on Rogan, liability for a constitutional tort under Section 1983 may also result.

In closing, it should be pointed out that although the risk of personal liability appears not to be great, it is growing and the potential for liability clearly does exist. Therefore, it is important for criminal justice officials to understand the theories and boundaries of liability for record mishandling and to monitor court decisions that affect the scope of personal exposure of criminal record personnel. NCIC

(NCIC) National Crime Information Center