

\$1.1 million award upheld for chaplain abused by deputies

[1,2,3,4,5,6,7 Edition]

The San Diego Union - Tribune - San Diego, Calif.

Author: LORIE HEARN

Date: May 7, 1993

Start Page: A.1

Section: NEWS

Text Word Count: 1179

Document Text

Head varies | Editions vary | Fifth graph up from end of text appears in Edition 6.

A state appeals court has upheld a jury's \$1.1 million award to a former Navy chaplain who was arrested and brutalized by sheriff's deputies eight years ago after he tried to help deputies who were handling a traffic accident in front of his Vista home.

In an unanimous opinion filed Monday, three judges of the 4th District Court of Appeal in San Diego found the mega-verdict justified by "substantial evidence."

And Justice Charles Froehlich Jr., in written comments separate from the majority decision, described the deputies' actions in James William Butler's case as upsetting and "Neanderthal," saying the abusive way Butler was treated in jail "raises the ire of we ordinary citizens."

Butler's beating was one of the first of about two dozen brutality cases to rattle the regime of former embattled Sheriff John Duffy, who died earlier this year.

The allegations of brutality against Duffy's deputies shook public confidence in the county's top law-enforcement agency. And the ensuing controversy led to the formation of a review board to oversee the department and to a sharply worded report by the county grand jury, which recommended taking control of the jails away from the sheriff.

Froehlich had similarly sharp words for the way the Sheriff's Department under Duffy's tutelage treated Butler.

"It is with revulsion that we hear of deputy sheriffs using crude and abusive language to cow a citizen who has done nothing other than attempt to assist . . . in an accident investigation," Froehlich wrote.

Butler was arrested Jan. 19, 1985, during a dispute with deputies at a traffic-accident site on a dangerous curve outside his Foothill Drive house. Deputies said Butler had interfered with their work after the accident.

Butler said he was battered during the arrest and then roughed up in a padded room at the Vista Jail after he refused to give his name.

Butler was acquitted on charges of battery on a police officer and resisting arrest, but his lawyers said he suffered a nervous breakdown after his arrest and was hospitalized for depression.

After a monthlong trial in 1990, a jury concluded that Butler's constitutional rights were violated and gave him the largest award ever in a San Diego County law-enforcement brutality case.

"It was an outrage what they did to me," said Butler, 63, who claims he continues to suffer physically -- he recently underwent back surgery -- from his encounter with the deputies.

The appeals court decision delighted Butler and his attorneys. Even Sheriff Jim Roache, who was elected in 1990 after Duffy declined to run, did not dispute Froehlich's criticisms.

"As he correctly points out," Roache said, "law-enforcement officers are public servants entrusted with the public trust. It's a difficult, tough job, but we are required to handle ourselves in a courteous, humane manner, no matter how we are provoked."

Butler, who has become a vocal advocate of police accountability, says he still gets calls about continued abuse by sheriff's deputies, and he is a strong supporter of the Citizens Law Enforcement Review Board. The board, which has gotten off to a slow start amid legal challenges, was endorsed by voters in 1990 as an independent panel to examine citizens' complaints and restore public confidence in law enforcement.

Voters rejected a companion measure that would have allowed the county to end the sheriff's control of the jails.

Roache said he believes most of his 1,400 deputies act responsibly and said he actively investigates any brutality complaints.

Butler said he thinks only a small number of deputies abuse their authority, and said it's a shame that those deputies are not removed.

Roache said sheriff's officials fully investigated the actions of the two deputies specifically named in Butler's lawsuit -- Robert Bishop, who knocked Butler down and arrested him, and Bolitha Laws, who roughed up Butler in the jail. Both are still full-time deputies.

Although the appeals court essentially blessed the jury's verdict, it ordered the case back to Superior Court Judge Barbara Gamer for a hearing on whether the award improperly included punitive damages and not just Butler's losses and actual damages.

Punitive damages -- meant to punish or deter future conduct -- are not allowed in lawsuits against the county because it would mean taxpayers, who pay the bills, would be punishing themselves.

Deputy County Counsel Nathan Northrup said it was significant that the court ordered the trial judge to re-examine the issue in light of statements from jurors who suggested some panelists might have intended to punish the county with an excessive award.

Northrup said it will be up to the Board of Supervisors to decide whether to appeal to the state Supreme Court the overall decision upholding the verdict.

Butler's lawyers said they believed the order to hold a hearing on the matter of punitive damages was just a technicality that would not upset the award.

"I consider this as complete a victory as can be without them saying it's over," said Michael Crowley, one of Butler's lawyers.

He said he hoped the county would not decide to press further appeals because delays were costing the taxpayers 10 percent interest on the judgment each year.

Tom Adler, Butler's other lawyer, said he was especially heartened by Froehlich's written comments, saying: "Justice

Froehlich correctly characterized the actions of the deputies as Neanderthal."

In the main opinion written by Justice Howard Wiener, the appeals court said that the \$1.1 million jury award was not excessive.

Wiener said the judgment appeared proper compensation based on evidence that showed that "the sheriff's deputies, without any valid reason, subjected . . . Butler to substantial physical and emotional abuse, leading to severe psychological and emotional depression, the loss of his capacity to earn a living, damaged personal and professional relationships, and a loss of confidence and faith in the government."

Nevertheless, Wiener, with agreement from Froehlich and Justice Gilbert Nares, said the trial judge should have considered affidavits from jurors who claimed the verdict was inflated with improper extra damages when Gamer ruled on the county's request for a new trial. (Ed. 6)

Although Froehlich agreed with his colleagues in upholding the award, he found the award to be suspiciously high and concluded that it included improper punitive damages.

But although those damages were not allowed, Froehlich said the facts of the case would have justified them.

"One can hardly read the testimony of the plaintiff and his relatives, who witnessed the assaultive and warrantless arrest, without coming to the conclusion that the deputies perpetrating same should be punished," he wrote.

Referring to specific incidents in the case, Froehlich said: "It raises the ire of we ordinary citizens . . . to hear of one of our number being subjected to additional hours of detention in the `safety' cell, with his wife awaiting him outside the jail -- having put up his bail hours earlier -- simply because he `(expletive)' a Neanderthal jail keeper by signing a fingerprint card 'under duress.' "

Credit: Staff Writer

Reproduced with permission of the copyright owner. Further reproduction or distribution is prohibited without permission.

Abstract (Document Summary)

Justice Charles Froehlich Jr., in written comments separate from the majority decision, described the deputies' actions in James William Butler's case as upsetting and "Neanderthal," saying the abusive way Butler was treated in jail "raises the ire of we ordinary citizens."

[Sheriff Jim Roache] said sheriff's officials fully investigated the actions of the two deputies specifically named in Butler's lawsuit -- Robert Bishop, who knocked Butler down and arrested him, and Bolitha Laws, who roughed up Butler in the jail. Both are still full-time deputies.

Tom Adler, Butler's other lawyer, said he was especially heartened by Froehlich's written comments, saying: "Justice Froehlich correctly characterized the actions of the deputies as Neanderthal."

Reproduced with permission of the copyright owner. Further reproduction or distribution is prohibited without permission.