

SENATOR CULLAN: So you are trying to tell the Legislature that we should interpret the phrase, "deliberate indifference" as meaning negligent.

SENATOR NICHOL: That is right.

SENATOR CULLAN: Okay, thank you, Mr. President. Now I think I understand and I can see the reason for some of this confusion. Now, negligence means you fail to use reasonable care or fail to exercise caution. It means that you didn't exercise the kind of discretion that you should have but it doesn't imply intentional doing of anything. It doesn't imply deliberate and so I guess from Senator Nichol's explanation that we should interpret deliberate to mean negligent would simply be incorrect and I can understand that and that is probably one of the reasons for the confusion, but deliberate is deliberate, is intentional, is whatever other synonym you want to use and the judge did not say that these people were negligent. He said that they were deliberately indifferent. Now that is not negligence. That means that they knew and they ignored it. That implies intent and that is significant. I don't think we should pay these individuals when they were deliberately indifferent. That is significant. That doesn't mean that they just were not aware. It is not negligence. I urge you to oppose Senator Nichol's motion.

SENATOR CLARK: Senator Vard Johnson.

SENATOR V. JOHNSON: Mr. Speaker, members of the body, I want to call to your attention an important fact. You and I passed LB 273 the other day and the Governor signed the bill so the bill is now the law of the state and this bill establishes the state's policy on reimbursing employees for tortious acts that they commit. This bill says that we will not reimburse a state employee for a tortious act which the employee commits if, number one, the act was not committed within a scope of employment which is irrelevant here but, number two, if the act amounted to willful or wanton neglect of duty. Now let me ask you, when Judge Schatz said that these two gentlemen's activities were deliberately indifferent to the constitutional rights of Mr. Robinson, I submit that that concept, deliberate indifference, already falls within the ambient of a policy decision you and I have made. To be deliberate is to be willful. To be indifferent is to be negligent. That is equivalent to willful neglect of duty. Now what the acting director of corrections, Mr. Best, asks here is that he wants to relitigate this case. He wants to relitigate it right here in the body. He wants to say simply that this concept, "deliberate indifference" was just kind of a legal term and besides these two gentlemen really were