

An inmate sued a private prison-management company in federal court for allegedly mistreating her in violation of federal law. During the jury trial, the inmate's attorney questioned one of the company's prison guards. When the guard repeatedly gave nonresponsive answers, the inmate's attorney became frustrated and accidentally complained out loud in the presence of the jury, "The guard obviously has something to hide." The company's counsel objected to the comment. The inmate's attorney immediately apologized and withdrew the comment from the record, and the judge admonished the jury to disregard the comment. The inmate's attorney did not make any other improper comments throughout the rest of the trial.

At the end of the trial, the jury returned a verdict in favor of the inmate, finding that the overwhelming amount of evidence supported her claim. The court entered a final judgment consistent with the verdict. The company immediately moved for a new trial on the ground that the inmate's attorney made the improper comment.

Will the court likely grant the company's motion for a new trial?

- A. No, because the comment was harmless.
- B. No, because the comment was unintentional.
- C. Yes, because the comment was made in the presence of the jury.
- D. Yes, because the comment was prejudicial.

## Explanation:

### Grounds for new trial

- Prejudicial trial error (eg, erroneous evidentiary ruling)
- Prejudicial misconduct by judge, attorney, party, or juror
- Verdict not supported by clear weight of evidence
- Verdict based on false/nonexistent evidence
- Excessive or inadequate damages
- Newly discovered evidence

A court can grant a **new trial** if an attorney (or judge, party, or juror) engaged in **prejudicial misconduct** during the trial. Misconduct is prejudicial when it **affects a party's substantial rights**. This requires the court to determine with fair assurance whether the jury's verdict was influenced by the error. If there was **no improper influence**, then the error was **harmless** and does not provide a basis for a new trial.

Here, the jury found that the overwhelming amount of evidence supported the inmate's claim. This shows that the attorney's improper comment likely did not influence the jury's verdict. Even if the comment initially affected the jury, any improper influence was cured when the attorney apologized and withdrew the comment from the record, and the judge admonished the jury to disregard it. As a result, the court will likely find the error was harmless and deny the company's motion for a new trial **(Choices C & D)**.

**(Choice B)** The fact that the inmate's attorney unintentionally made the comment has no bearing on the company's motion for a new trial. Had the comment influenced the jury's verdict, the motion likely would have been granted.

### Educational objective:

A new trial is warranted when an attorney engaged in prejudicial misconduct—ie, misconduct that affects a party's substantial rights by influencing the jury's verdict. If misconduct is *not* prejudicial, then it is merely harmless error that does not warrant a new trial.

### References

- Fed. R. Civ. P. 61 (harmless error).
- 58 Am. Jur. 2d New Trial § 101 (2019) (explaining that an attorney's misconduct must be prejudicial to warrant new trial).

