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U.S. DISTRICT COURT
EASTERN DISTRICT ARKANSAS

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TAMMY H. DOWNS, CLERK
By:  DEP. CLERK

Amicus Brief

By

Jason M. Lynch

Case # 4:24-cv-00740-LPR-BBM

Brief on Lynch's "Third Amended
Complaint"

All information is in reff to Lynch's TAC
(Third Amended Complaint) & Constitutional Rights
of Prisoners —

All supporting information is from
2024 Matthew Bender & Company Inc of
the LexisNexis Group. And is attached
herein.

To Save time for the courts and my
lack of good handwriting some pages
have highlighting. If Highlighted it
directly applies to my case and weights
heavily on my TAC

Loper - Removed the presumption of Authority from Agency rules that Contradict federal Statutes & laws...

One of the legal concepts that in the past and at WEDC, that has given Edwards and his staff the illusion of unchecked power over our lives is the concept of "Qualified Immunity."

"Qualified Immunity" only shields from personal liability when the individual being sued is in compliance with the law's.

Edwards ordering nurses under threat of being fired to not follow ~~up~~ different Dr(s) orders, ordering the blocking of outgoing legal mail, blocking communication with this very court, ordering unjust lock down with no due process as reprisal, or interfering with court procedures as he did with myself & my wife, his conspiring to deprive me of my 1st, 4th, 5th, 8th, 14th Amendments and repeated denial of Constitutionally protected rights all outlined herein and more clearly in my Third Amended Complaint; not only do not and are not in compliance with law. His actions and others listed clearly violated State & federal law

Case # 4:24-CV-00740-LPR-BBM

* Everything is in my Third Amended Complaint ^{on pacer.gov}

My Third Amended Complaint includes claims on:
repeated denial of Constitutional protected rights

Discriminatory torture

deliberately indifferent of serious of medical need

denial of medical care & treatment

Refusal to follow two different Dr orders

Intent to harm, infliction of wanton pain

Conspiring to harm and retaliate

denial of Free Exercise of Religion

Refusal to mail outgoing legal mail

Opening incoming legal mail w/out me present

Throwing away legal mail, 1983 forms

Not allowing unmonitored Attorney calls

Excessive Force to take my legal Documents (1983)

Censorship/Blocking Communication with

- Courts, media, State offices, Gov Offices

No Due Process on reprisal lock down

Repeated Pretrial Detainee Strip Searches

Cruel and unusual, Barbarous inhuman punishment

I all started over staff denying me my meds for HIV
that I have been on for years, after a week of
not getting meds my Dr ^{wrote} ~~called~~ the caption of the
Jail and an family attorney called too to inform them
of my need and what happens without my med.

This call pissed the caption off so much he set out
on making my life hell. Its all in my 3rd Complaint

Pages

- 1 cover
- 2 to 6 my hand written outline
- 7 Pretrial Detainees
- 8 Control of Prisoner's mail - Traditional
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- 13 Censorship of Comm with the Courts
Communication with Attorneys
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- 23 - Violation
- 30 Exercise
- 31 Conditions Below Constitutional Min Standards
- 33 Retaliation Claims
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§ 4.2 Pretrial Detainee.

Lynch being a pretrial Detainee upon entering adds an element(s) to his claims as pretrial Detainees constitute a special category of prisoners, generally held that are entitled to some rights as citizens. more over there was reasonable cause, suspicion penological interest of evidence to:

- a. Repeated strip serches by wcdc staff
- b. Arbitrary discriminatory treatment by Edwards and nameb staff in TAC
- c. intentionally inflicting pain by Excessive Force by Rogers.
- d. Inhuman or Degrading Treatment by wcdc staff

Including all the other claims listed in my TAC (Third Amendend complaint.) There is no need to linger or rewrite all of my Arguments and Claims in my TAC; any reasonable person should know the element of a pretrial Detainee can apply to all actions before 7-23-24.

§ 5.3.1 Censorship of Comm w/ Courts & § 5.4 Comm with Attorneys

§ 5.5 communication w/ Nonjudical Public Officials

§ 5.6 " " w/ News Media - Edwards, Lt Boss

Siler, Jones, Goodwin and others at WDC willful interference with Lynch freedom of speech and freedom of the press are restrictions on the 1st Amendment. Opening legal mail with Lynch not present, not mailing his mail, throwing his mail

not allowing unrecorded calls or mail with his Attorneys, media, courts, state offices and all actions in his TAC all attack his fundamental right to do so

§ 7.4.5 Free Access to Ministers right was deprived by Edwards not allowing Lynch a Catholic Priest or service. Blanket Ban on Book and No Catholic Bibles substantially burdened right exercise of religion.

§ 9.2 Due Process of Law - The planned series of disciplinary actions as retaliation for insisting on rights and the initiating a civil rights suite against wcoe officials violated Lynch's Fifth and Fourteenth This also brings Rutherford of a conspiracy to deprive of civil rights and intent to harm in Lynch's TAC he was engaged in a constitutionally protected activity of freedom of speech and that pissed off Edwards and staff at wcoe. who then started a planned series of retaliation against Lynch who was harmed by doing so, also deprived him of other rights as and to deter him from exercising constitutional rights. Lynch's rights and action of those rights were clearly the motivating factor to discipline him by unjustly locking him down and other actions listed in Lynch TAC.

§ 10.3 Right to Medical aid - Lynch TAC complaints list allegations of total denial of medical care by denying him the right to see a Dr over 14 different times, even though staff knew he was chronic care due to his HIV. Improper medical care by not following 2 different Dr(s) orders or following the orders of non medical staff when they knew the outcome would cause grave harm or early death. Inadequate care by Throwing his meds, crushing his meds, giving his meds to other inmates, losing his meds and not following Dr orders. Also the right to be free from the infliction of cruel and unusual punishment as guaranteed by the 8th. All of Lynch's claims arise out of retaliation and that caused the intentional denial of medical care and thus the deliberate indifference to medical needs. Also the hate cause Lynch was HIV positive had no conceivable justification. The denial of treatment and care of Lynch's meds is a sufficiently serious. All officials were aware of the facts as Lynch told the and care of their training but officials still chose to disregard the risk to Lynch's health.

★ The series of failures attributable to different county officials on multiple occasions to attend to his medical needs. WDC officials ignored the orders of two doctors not to mishandle his meds but still did shows officials were deliberately indifferent to Lynch's medical needs over 100 times within 90 days.

The lengthy delay in seeing a Dr also raises the issue of deliberate indifference to a serious medical needs. WDC & Turnkey caused a delay of 80 days when it should have taken only 1 week to see a Dr. Watts ignoring Lynch's request 14 times and refused to examine him for ingrown toe or staff infection causing Lynch to suffer pain and infection violated the Eighth Amendment.

★ WDC and Turnkey officials who were on notice that its employees ignored the medical needs of inmates, its practice of failing to act in the face of known violations of its written policies is/was relevant circumstantial evidence showing WDC & Turnkey and all staff knowledge and state of mind.

The deliberate feeding of rotten food violates the 8th.

§ 11.6.3 Exercise - Edwards, workman, ~~settler~~ swindle & woods were staff not allowing only P Pod yard call for over 4 weeks when every other pod got yard call ~~pod~~ is violating the Eighth

walls in medical lock down were feces covered and no cleaning supplies for 9 days

Lynch TAC has more info on all the 8th claims

§ 11.8 Retaliation - weede, edwards and others conspired to retaliation against for Christian alexander phone, call, his prayer group and for filing lawsuits. Lynch's complaints angered "higher-ups" There is suspect timing on the shake downs, strip searches, lock downs and other actions outlined in the TAC

weede made daily rounds and were directly responsible for placing Lynch in inhumane conditions in medical lock down, and sewage flooding in Pod

§ 4.2 Pretrial Detainees

Pretrial detainees constitute a special category of prisoners. It has been generally held that pretrial detainees are entitled to the same rights as other citizens except to the extent necessary to assure their appearance at trial and the security of the institution.¹⁷ Although a pretrial detainee may be subject to some of the same restrictions as convicted prisoners, the restrictions are not unconstitutional unless they amount to punishment.¹⁸ Some courts have held that, for pretrial detainees, restrictions on visitor access must be justified by a compelling interest.¹⁹

In a strip-search case, prison officials were enjoined from continuing an unconstitutional strip-search policy. A department cannot constitutionally conduct strip and visual body cavity searches of pre-arraignment detainees that are not based upon reasonable suspicion that a particular detainee is concealing weapons or contraband. Strip and visual body cavity searches of arrestees for minor offenses without reasonable suspicion that the arrestees carried weapons or contraband is unconstitutional, even if the arrestees were being commingled with the general prison population.²⁰

Cases have been filed in numerous jurisdictions in which plaintiffs challenged a policy or custom of conducting strip searches of pre-arraignment detainees without grounds for reasonable suspicion.²¹

To indicate how the law changes in this area, the en banc U.S. Court of Appeals for the Eleventh Circuit struck out language in an opinion by a panel of the court that had agreed with other circuits that the Fourth Amendment is violated by a blanket policy of routinely strip-searching arrestees in the absence of a reasonable suspicion that they have evidence or contraband.²²

§ 5.2 The General Right to Control a Prisoner's Use of the Mail System—The Traditional Approach

This section, together with the following sections, will discuss the general right of prison authorities to regulate prisoner mail, and several of the specific procedures they use to accomplish this regulation.

As a starting point, it may be stated that a myriad of previous cases have established and maintained the proposition that control of prisoner mail is an administrative matter in which the courts will not interfere, unless it is shown that an independent constitutional right is being infringed.⁶ This may, for lack of a better phrase, be called the “traditional view” of the courts on prisoner mail regulation. The reason most often advanced to support the traditional view is that courts will not become involved in the normal management of a prison system.

In retrospect, we can see that in cases in which the courts did interfere with prison mail rules, another constitutional right was involved. Thus, communication between a prisoner and a court involved the right of access to the court system. Communication between a prisoner and his or her attorney involved both the right of access to courts and the Sixth Amendment's guarantee of counsel for criminals. The First Amendment right to petition the government for redress of grievances justified court intervention in correspondence to and from nonjudicial public officials and agencies. The cherished American freedoms of speech and press were involved in regulations concerning access to news media. These rights also were involved in attempts by prison officials to exclude newspapers, magazines, and books from an institution. Inclusion of white-oriented periodicals on approved mailing lists that excluded black-oriented materials raises equal protection issues.

If, however, a prisoner could not couple his or her complaint of undue restriction on use of the mail with an allegation that a separate constitutional right was thereby infringed, he or she was, under the “traditional view,” doomed to failure in the courts. Thus, in *Dayton v. McGranery*,⁷ a prisoner's allegation that he was prevented from writing to a young woman was dismissed because he did not state a cause of action. *Stroud v. Swope*⁸ affirmed the dismissal of a prisoner's complaint that sought to restrain a federal prison warden from refusing to mail the prisoner's manuscript to a publisher. Such allegations, the court held, did not constitute a deprivation of any of the petitioner's rights. Several federal appellate courts also refused to inquire into the reasons for not allowing a prisoner to take a correspondence course. Such decisions are “simply an exercise of administrative discretion.”⁹

§ 5.2.1 —The New Approach

Reading and inspection of prisoner mail serves two purposes: (1) it prevents contraband from being smuggled into or out of an institution; and (2) it enables the prison authorities to detect plans for illegal activity—namely escape. Thus, such action, at least for incoming mail, has uniformly been upheld by the courts.¹⁰ However, the administrators' refusal to mail correspondence that does not contain contraband or details of illegal schemes has been subject to judicial criticism. Under the traditional view, described in the preceding section, such a refusal is normally considered unreviewable. Under what we call the "new approach," prison officials are judicially required to justify such actions. Thus, in *McNamara v. Moody*,¹¹ prison officials were held to have violated a prisoner's constitutional rights by refusing to mail a letter to the prisoner's girlfriend. The court held that censorship must be limited to concrete violations such as escape plans, plans for disruption of the prison system or work routine, or plans for importing contraband.¹²

The new approach to regulation of prisoner mail is best illustrated by contrasting *Procunier v. Martinez*¹³ with *Turner v. Safley*¹⁴ and *Thornburgh v. Abbott*.¹⁵ The prisoner-plaintiffs attacked the validity of a California prison mail regulation that authorized prison officials to refuse to send prisoner mail, and to refuse to distribute mail to prisoners. The Supreme Court held the regulation void due to vagueness and overbreadth. In doing so, the Court recognized that the First Amendment rights of the "free world" correspondent were at issue. Guidelines for regulating prison mail were established.

Censorship of prison mail is justified if the following criteria are met. First, the regulation must further a substantial governmental interest that is unrelated to the suppression of expression. Prison officials may not censor prisoner correspondence simply to eliminate unflattering or unwelcome opinions or factually inaccurate statements. Rather, they must show that the regulation authorizing censorship furthers one or more of the substantial government interests of security, order, and rehabilitation. Second, the limitation of First Amendment freedoms must be no greater than is necessary or incidental to the protection of the particular government interest involved.¹⁶

In addition to providing the criteria for censorship, *Procunier* enunciated the minimum procedure that must be followed when prison officials censor or withhold mail. The prisoner must be notified of the rejection of his or her letter, the letter's author must be allowed to protest the refusal and the complaint must be decided by an official other than the one who made the original decision to refuse delivery.¹⁷

Thirteen years later, in *Turner v. Safley*, a different standard was used. The Supreme Court held that lower courts had been in error in holding that *Martinez* required the application

of a strict scrutiny standard of review for resolving prisoners' constitutional complaints. Rather, a lesser standard is appropriate when an inquiry is made into whether a prison regulation that impinges on prisoners' constitutional rights is "reasonably related" to legitimate penological interests. In determining reasonableness, relevant factors include: (1) whether there is a "valid, rational connection" between the regulation and a legitimate and neutral governmental interest put forward to justify it, and the connection cannot be so remote as to render the regulation arbitrary or irrational; (2) whether there are alternative means of exercising the asserted constitutional rights that remain open to prisoners, and the alternatives, if they exist, will require a measure of judicial deference to the corrections officials' expertise; (3) whether and the extent to which accommodation of the asserted right will have an impact on prison staff, on prisoners' liberty, and on the allocation of limited prison resources, and whether the impact, if substantial, will require particular deference to corrections officials; and (4) whether the regulation represents an "exaggerated response" to prison concerns, the existence of a ready alternative that fully accommodates the prisoner's rights at *de minimis* costs to valid penological interests being evidence of unreasonableness.

§ 5.5 Communication with Nonjudicial Public Officials and Agencies

One of the rights specified in the First Amendment is the right to petition the government for the redress of alleged grievances. This right is especially important to prisoners when they complain of conditions of confinement. Quite often, however, an administrative complaint to the department of government ultimately responsible for the management of the prison is both faster and more effective than seeking judicial review. Thus, the courts have generally protected the right of prisoners to utilize the mail system to communicate with nonjudicial public officials and agencies. *LeVier v. Woodson*⁴⁵ prevented state prison officials from stopping letters (complaining of prison conditions) to the state governor, attorney general, and the attorney working for the state's pardon agency.

Reading and censoring prisoner correspondence became more restricted after the *Procunier* and *Wolff* decisions. The rationale of these two cases was relied upon in *Taylor v. Sterrett*,⁴⁶ and applied to prisoner correspondence with government agencies. Emphasizing the prisoner's First Amendment right to petition the government for redress of grievances, and finding the reading of government agency correspondence not substantially related to jail security, the court enjoined prison officials from reading the correspondence. The decision, however, allowed prison officials to continue opening incoming mail to check for contraband.

Punishing a prisoner for communicating his or her complaints to higher administrative levels is as much a denial of the right to petition government as is the outright refusal to mail such letters. This principle is exemplified by *Cavey v. Williams*,⁴⁷ in which a warden was ordered to pay compensatory and punitive damages to the prisoner plaintiff because the warden violated the prisoner's First Amendment rights by punishing him for a letter he wrote criticizing prison policies.

§ 5.6 Communication with News Media—Prisoners' Right to Use the Mail to Contact News Media

The First Amendment prohibits governmental interference with freedom of speech and freedom of the press. Although the judiciary has construed the amendment to allow reasonable restraints on these freedoms, it is still true that these rights occupy a preferred position in the American system of government. Thus, the courts generally require that any restriction on First Amendment rights be based upon a “substantial and controlling” state interest that requires such restriction,⁵⁹ and requires that the restriction be the least drastic method of accomplishing the state goal.⁶⁰

A prison ban on prisoners sending letters that complain of internal conditions in the institution to the news media—radio, television, and the press—restricts First Amendment freedoms in two ways. First, the prisoner's right to free speech is curtailed. Second, the public's right to know what is happening within the prison system, a right that can only be fulfilled through an informed press, is restricted.

Regardless of the degree of restriction on the actual flow of information between prisoner and reporter, however, prisoners would seem to have an interest in communication with the public through the press that is distinctive from and in addition to their interest in simply communicating with the news media.⁶¹

However, the vast majority of courts now recognize that a prisoner has the right to petition the courts concerning not only his or her conviction, but also the constitutionality of the conditions of his or her confinement. Access to the courts is a fundamental right and “all other rights of a prisoner are illusory without it . . .”²⁷

Mail from a court to a prisoner is “legal mail” entitled to constitutional protection and may not be opened outside the presence of the prisoner if he has specifically requested that he be present at the opening of his legal mail. However, mail from a court could be treated as general correspondence on the ground that it is a matter of public record. Further, a prisoner’s correspondence from a county clerk, a register of deeds, or the American Bar Association is not “legal mail.”²⁸

§ 5.3.1 —Censorship of Communication with the Courts

Several decisions have dealt with the right of prison officials to censor mail sent to and received from a court by a prisoner. In *Smith v. Shimp*²⁹ the court stated that privileged mail, i.e., mail between a prisoner and attorneys, government officials, or news media personnel, can be opened only in the presence of the prisoner and only to verify the addressee. Emphasizing the prisoner’s right of access to the courts, the Eighth Circuit Court of Appeals held that legal mail that is identified as such cannot be opened for inspection for contraband except in the presence of the prisoner.³⁰

The clear state of the case law is to allow incoming mail from the courts to be inspected for contraband, but with prohibitions against reading the correspondence.

§ 5.4 —Communication with Attorneys

A basic corollary to the right of access to the courts is the prisoner’s right to communicate with an attorney concerning the validity of his or her conviction or the constitutionality of conditions within the detention facility.³¹ If the prisoner is not represented by counsel, he or she has the right to correspond with an attorney in an attempt to secure legal representation, and this communication may set forth factual elements of his or her claim, even though critical of the prison administration.³² The right to seek legal representation extends not only to the right to communicate with individual members of the bar, but also to the right to seek advice and possible representation from legal organizations such as the American Civil Liberties Union.³³

Preaching is a form of religious exercise. A prisoner's religious exercise had been substantially burdened where prison officials would not allow him to preach anytime or anywhere, threatening that if he did so, he would be subject to disciplinary sanctions. Prison officials failed to show that the blanket ban on all preaching was the least restrictive means available to achieve its interest.¹⁰⁷

§ 7.4.5 —Free Access to Ministers

The cases dealing with the right of a prisoner, particularly a Black Muslim, to have access to a minister have been inconsistent. In two of these cases, *Jones v. Willingham*¹⁰⁸ and *Coleman v. Commissioner*,¹⁰⁹ the courts held that the prison officials could exclude Muslim ministers for protection or for security in the institution. In *Cooper v. Pate*,¹¹⁰ however, the court enjoined the administration from refusing to permit a prisoner to communicate through the mail or personal visitation with the ministers of their faith. As such communication did not constitute a clear and present danger to prison security and such communication was permitted for other religious denominations, the restriction against the Black Muslims was discriminatory.

There can be little doubt, irrespective of the controversy regarding security within the institution, that Muslim ministers, once admitted to the institution, must be permitted to wear such religious robes and raiment as they desire.¹¹¹ Furthermore, they must be paid at an hourly rate comparable to that paid to chaplains of other faiths.¹¹²

Essentially the same issue was present in *Remmers*, but the court in that case, while aware of the holdings in *Therault*, nevertheless decided that the Eclatarian faith was a “religion” and that members of such religion were entitled to protection under the free exercise clause. However, the court declared that if it were subsequently proved that the Eclatarian faith, as practiced at the prison, was in fact a sham, then the prison administrators and the court could deal with the eventuality. These two decisions highlight the continuing legal problem facing prison administrators when apparently inconsistent decisions are rendered by different federal courts, and the United States Supreme Court is either unwilling or unable to resolve the conflict.

A number of courts have adjudicated petitions that have alleged that religious liberties were denied when authorities prohibited attendance at general services while the petitioner was confined in a correctional cell.⁷⁹ A majority of these courts dismissed the complaint and distinguished between one’s freedom to believe and one’s freedom to exercise one’s belief. Such a restriction on the free exercise of beliefs is justified on the basis of maintaining both security and institutional internal correctional discipline.⁸⁰ However, in *Konigsberg v. Ciccone*,⁸¹ a Jewish petitioner established that Protestant and Catholic prisoners confined in close custodial supervision were permitted to attend services although he was not. The court refused to accept as reasonable the administration’s contention that they could not find sufficient escorts to conduct him to services. The court held that he should be allowed to attend services unless: (1) a physician certified medical reasons; (2) an officer certified that the prisoner was a security risk; or (3) his attendance would substantially and adversely affect security.

Prison officials confiscated five books sent to a prisoner by his church. The confiscation substantially burdened his exercise of religion. The Sixth Circuit¹⁰¹ held that the prisoner was not required to precisely explain how his inability to obtain the confiscated texts burdened the exercise of his religion and remanded the case to the district court. By the time of the remand, however, Michigan had changed its policy and permitted the questioned books to be sent to the prisoner. Nevertheless, the case was not dismissed due to the issue of damages.¹⁰²

§ 9.2 Due Process of Law

The phrase *due process of law* is found in both the Fifth¹³ and Fourteenth¹⁴ Amendments to the Constitution. The Fifth Amendment applies to federal action, the Fourteenth Amendment to state action. The phrase means little on its own; it depends completely on court interpretation to give it relevant meaning. The Supreme Court has indicated that there are two aspects of due process: substantive and procedural.

The substantive aspect involves the fundamental rights of the individual (such as life, liberty, and property) that are protected from government action. It is a question of whether an individual's interest can be protected by the federal courts as a constitutional right. The individual rights or interests protected by substantive due process vary, depending on whether a particular court regards the interest as "fundamental." The first eight amendments to the United States Constitution specifically enumerate fundamental rights of citizens that are protected from federal government action, such as freedom of religion, speech, press, and right of assembly. The same fundamental rights are protected against state action by the Fourteenth Amendment. Substantive due process requires government to treat the people with "fundamental fairness."

The procedural aspect of due process deals with the procedures or means by which government action can affect the fundamental rights of the individual; it is the guarantee that only after certain fair procedures are followed can the government affect an individual's fundamental rights. The exact procedural rights guaranteed depend upon what procedural rights a particular court regards as required by "justice and liberty."¹⁵

A consideration of what procedures due process may require varies with the circumstances. The precise nature of the government function involved must be ascertained, as well as the private interest that has been affected by the government action.¹⁶

A planned series of disciplinary actions as retaliation for initiating a civil rights suit against prison officials violated the prisoner's rights.¹⁷ Prison officials may not retaliate against a prisoner for exercising his or her constitutional rights. A prisoner accused prison officials of increasing his custody level, transferring him to a prison that had been documented as a place of danger, and denying him parole. Relief was denied. In retaliation cases, a prisoner must prove that he was engaged in a constitutionally protected activity. Second, a prisoner must demonstrate that he suffered some adverse action at the hands of the prison officials. This requirement is satisfied upon a showing that the action was sufficient to deter a person of ordinary firmness from exercising his constitutional rights. Third, a prisoner must prove that his

constitutionally protected conduct was a substantial or motivating factor in the decision to discipline him. The burden then shifts to the defendant who must prove by a preponderance of the evidence that it would have taken the same disciplinary action even in the absence of the protected activity.¹⁸

A correctional officer violated a prisoner's constitutional rights by writing false disciplinary reports against the prisoner in retaliation for grievances filed against him. The prisoner was transferred 250 miles from his home after he questioned the correctional officer regarding prisoners' rights to legal assistance.¹⁹

A prisoner's allegation that he had been placed in solitary confinement without any notice of charges or any hearing for one week and that he was threatened with violence when he asked what the charges were, stated a cause of action under the Civil Rights Act.²⁰

Prisoners were deprived of procedural due process at a disciplinary hearing in which: (1) no independent evaluation of the reliability of a confidential informant was made, (2) the hearing officer merely accepted conclusions of the investigating officer who in turn merely accepted the conclusions of the warden, and (3) the investigating officer had no direct knowledge of what the informant told the warden about a prisoner's plans for escape, who the informant was, or how he got information. The hearing officer had no evidence before him from anyone with direct contact with the informant.²¹

§ 10.3 Right to Medical Aid

Prisoners in state and federal institutions have sought redress in the federal court system for medical treatment they have received and failed to receive. Complaints about medical treatment have included claims about the adequacy and nature of the medical care received, allegations of a total denial of medical care, improper medical care, inadequate care, and conduct of prison officials attendant to the medical care.

The power of the federal courts to adjudicate a prisoner's complaint about medical treatment requires that a federal right be involved in the medical -treatment.⁴³ The prisoner must allege the presence of a federally protected right. Several federally protected rights have been named by the federal courts in medical treatment cases:

1. Right to due process of law under the Fifth or Fourteenth Amendments.⁴⁴ The due process right has been couched in terms of the prisoner's right to be free from an abuse of discretion on the part of prison administrators;⁴⁵ protection from unconstitutional administrative action;⁴⁶ protection of a prisoner's life and health from administrative action.⁴⁷
2. Right to be free from the infliction of cruel and unusual punishments as guaranteed by the Eighth Amendment.⁴⁸ Violation of Eighth Amendment rights has been found when there is an intentional denial of needed medical care, or when a prison official's conduct indicates deliberate indifference to the medical needs of prisoners.

Despite the willingness of federal courts to hear cases that involve the federally protected rights of prisoners to medical aid, there are limits to what prisoners can expect to accomplish through the courts. In *Priest v. Cupp*,⁴⁹ the court explained that neither federal nor state constitutional prohibitions of cruel and unusual punishment guarantee any prisoner that he or she will be free from or cured of all real or imagined medical disabilities while he or she is in custody. What is required is that the prisoner be afforded such medical care, in the form of diagnosis and treatment, as is reasonably available under the circumstances of his or her confinement and medical condition.

Just as prison officials cannot deny all medical aid, prisoners cannot expect a flawless medical services system. Consequently, litigation involving the medical rights of prisoners has now focused upon the nature of so-called adequate or reasonable medical care.

What amount of medical aid is adequate depends largely upon the facts of each case. In *Gates v. Collier*,⁵⁰ the Fifth Circuit Court of Appeals reviewed the medical treatment that was available at the Mississippi State Penitentiary. With more than 1,800 prisoners, the prison

administration relied upon one full-time physician, several prisoner assistants, and a substandard hospital to provide medical care. The court ruled that the services and facilities were inadequate and ordered the prison administration to: (1) employ such additional medical personnel as necessary so that the prison's medical staff would consist of at least three full-time physicians, one of which must be a psychiatrist and another the prison's chief medical officer,⁵¹ two full-time dentists, two full-time trained physicians' assistants, six full-time registered or licensed practical nurses, one medical records librarian, and two medical clerical personnel, and to obtain the consultant services of a radiologist and a pharmacist; (2) comply with the general standards of the American Correctional Association relating to medical services for prisoners; (3) have the prison hospital and equipment brought into compliance with state licensing requirements for a hospital and infirmary, including adequate treatment for the chronically ill; (4) refrain from punishment of prisoners who seek medical aid unless the superintendent makes an express finding that the prisoner sought medical care unnecessarily and for malingering purposes; and (5) refrain from the use of prisoners to fill any of the above described civilian medical staff, but to encourage the use of trained and competent prisoners to supplement the above minimal civilian medical staff.⁵² As in most "treatment" cases, the lack of funds has not been recognized as a defense or excuse. However, in *Miller v. Carson*,⁵³ a federal court approved a Florida county prison's medical services staff, which included one full-time physician, a licensed physician's assistant, and 13 nurses, because their work schedule allowed a crisis intervention desk to be staffed 24 hours per day, with the physician or the licensed physician's assistant on call at the jail 24 hours a day as well. The proximity to the jail of a university hospital for emergency treatment made such a minimal staff feasible. This Florida county prison had a maximum capacity of 432 prisoners.⁵⁴ Other states have also grappled with this personnel problem. In *Craig v. Hocker*,⁵⁵ the court found that medical care was adequate and reasonable based on the presence of a full-time physician and a full-time dentist in the prison, as well as two registered nurses, a psychiatrist, a part-time pharmacist who gave reasonably prompt attention to genuine complaints from prisoners, a prison hospital ward to which sick prisoners could be removed when so directed by a doctor, and provisions for taking prisoners under guard to local hospitals for diagnostic or treatment procedures not available in the prison. The prison contained 854 prisoners prior to trial.

Once the courts have assured themselves that adequate or reasonable medical care is available to a prisoner, the historic "hands off" doctrine is again evident. What constitutes necessary and proper medical care of a prisoner, in the absence of allegations of intentional negligence or mistreatment, must be left to the medical judgment of the prison physician, and cannot form the basis for a civil rights complaint.⁵⁶ Prisoners cannot be the ultimate judges of what medical treatment is necessary or proper, and courts must place their confidence in the reports of reputable prison physicians.⁵⁷ The allegations by prisoners that they have received inadequate medical care can be disproved by prison medical records.⁵⁸

An apparent difference of opinion between a prisoner and his or her physicians as to what treatment is necessary and proper does not give rise to a legal cause of action against the physician.⁵⁹ Medical mistreatment or non-treatment must be capable of characterization as cruel and unusual punishment in order to present a claim under a civil rights statute.⁶⁰ The standard for what treatment rises to cruel and unusual punishment was set forth in *Estelle v. Gamble*.⁶¹ In that case, the Supreme Court reasoned that there must be facts and evidence to show a deliberate indifference to serious medical needs. Thus, simple negligence will not be sufficient to obtain a judgment against prison medical or security staff for inadequate treatment as a constitutional violation. The lack of medical treatment must be intentional; an accident or inadvertent failure to provide proper medical care is insufficient to meet the Supreme Court's standard of deliberate indifference to serious medical needs. It should be noted, however, that negligence may be actionable in state courts under state law.

However, it is one thing to warn other prisoners that a prisoner is an HIV carrier; it is another to "punish" him or her for being a carrier by refusing to allow him or her to get a haircut or to exercise in the prison yard. *Anderson* was the first appellate case in which these specific modalities of punishing HIV carriers have been alleged. The Eighth Amendment forbids the state to punish people for a physical condition, as distinct from acts.⁶² The equal -protection clause forbids the state to treat one group, including a group of prisoners, -arbitrarily worse than another. If the only reason the prison officials denied haircuts and yard privileges to the prisoner was that he was HIV-positive, and there was no conceivable justification for these as AIDS-fighting measures, the denial was improper.

The right to medical aid also includes the right of refusal. A competent -person has a constitutionally protected liberty interest to refuse unwanted -medical treatment, as was stated in *Cruzan v. Director, Missouri Dept. of Health*.⁶³ However, in *North Dakota ex rel. Timothy Schuetzle v. Vogel*,⁶⁴ a prisoner was required to submit to diabetes monitoring of his blood sugar and, if ordered by a physician, to forcibly submit to food, insulin, and other medications to prevent deterioration of his health or premature death.

A patient has the right to refuse drug treatment. The right is adequately protected by hospital regulations that provide a series of informal consultations and interviews to determine, from a medical standpoint, whether compelled administration of drugs is necessary. It is not necessary to provide the patient with a due process hearing, a system of "patient advocates," or an independent decisionmaker.⁶⁵

In the case of a prisoner, the state has an important interest in maintaining the confinement of the prisoner. The integrity of its correctional system must also be considered.⁶⁶ Courts will not condone a prisoner's manipulation of his or her medical circumstances to the detriment of a state's interest in prison order, security, and discipline. The "purpose" for

refusing unwanted medical treatment is a factor that prison officials may legitimately consider in determining whether the refusal is likely to be a disruptive influence, or otherwise detrimental to the effective administration of the prison system⁶⁷ because the state's interest in orderly prison administration is the controlling factor.⁶⁸

Ordinary and normal health needs are the criteria. The Constitution does not require a state prison system to permit a prisoner to have a sex change operation.⁶⁹

Because health care is costly, there is no constitutional problem with requiring prisoners to pay nominal fees for health care.⁷⁰

Chronic pain constitutes a "continuing violation" and is not barred by any statute of limitations as long as the medical need remained untreated.⁷¹

§ 10.3.1 —Violation

The deliberate indifference standard of *Estelle v. Gamble*⁷² embodies both an objective and a subjective prong. First, the alleged deprivation must be, in objective terms, "sufficiently serious."⁷³ Second, the charged official must act with a sufficiently culpable state of mind. Deliberate indifference requires more than negligence, but less than conduct undertaken for the very purpose of causing harm.⁷⁴ More specifically, a prison official does not act in a -deliberately indifferent manner unless that official knows of and disregards an excessive risk to prisoner health or safety; the official must be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he or she must also draw the inference.

In *Hathaway v. Coughlin*,⁷⁵ the Second Circuit applied these standards and held that a prison doctor was deliberately indifferent to the prisoner's -serious medical needs in that he knew of and disregarded an excessive risk to his health. The doctor never informed the prisoner that he had two broken pins in his hip. The prisoner did not learn of his condition for one year after an X-ray. The presence of broken pins in a hip is information that would cause most people to consider surgery. Nonetheless, the doctor never shared this information with the prisoner nor raised the possibility of surgery with him following the discovery of the broken pins.

Deliberate indifference was also present in a delay of more than two years between the discovery of the broken pins and the time the doctor asked that the prisoner be re-evaluated for surgery. Despite requests for further evaluation and additional treatment, and the prisoner's constant complaints, the doctor did not take the prisoner's condition seriously.

In *Ricketts v. Ciccone*,⁷⁶ the court held that when a federal prisoner was in need of medical

treatment due to chronic rhinitis caused by allergic sensitivity to an identified mold, the director of the prison and the Bureau of Prisons were legally required to provide the most suitable medical treatment reasonably available. In determining a claim for lack of medical treatment, the standard is whether needed or essential, as opposed to desirable, medical treatment is being denied. The court held that denial of the request by the prisoner, suffering from chronic rhinitis, to be transferred to a federal prison in a relatively dry climate as treatment for his illness, was arbitrary and unreasonable. Such action was held to be a denial to the prisoner of the best reasonably available medical treatment, when at least one federal prison was available in a climate beneficial to the prisoner's illness.

In *Comstock v. McCrary*, a prison psychologist subjectively perceived a risk of serious harm to a prisoner but displayed deliberate indifference to the prisoner's serious medical needs. The psychologist took the prisoner off the suicide watch he had placed him on just the day before. He did not make a thorough assessment of the prisoner's emotional state, or make a reasoned assessment or evaluation of the prisoner's suicide risk. The psychologist knew that the prisoner was concerned about possibly being harmed by other prisoners.⁷⁷

A commissioner rejected a prison medical staff's recommended transfer of a disabled prisoner to another facility with appropriate accommodations. The failure to maintain the prison in accordance with federal standards of accessibility was contrary to a clearly established requirement that the state not act in deliberate indifference to a prisoner's serious medical needs. The commissioner was not entitled to qualified immunity in a prisoner's Eighth Amendment claim.⁷⁸

A prisoner alleged a series of failures attributable to different county officials on multiple occasions to attend to his medical needs. The continuing failures over a period of several weeks adequately showed that county officials had a widespread custom of failing to provide care for his serious medical needs.⁷⁹

A deliberate indifference to serious medical needs claim was shown where a prisoner alleged numerous problems and symptoms he suffered without proper glasses in the fluorescent lighting of his cell. Prison officials ignored the orders of two doctors that the prisoner be provided with tinted glasses with side shields.⁸⁰

Prison officials were held deliberately indifferent to a prisoner's medical needs when his dentures were not given to him. This resulted in an inability to chew or eat properly, as well as bleeding, headaches, and disfigurement. Also, he was not given his heart medication, resulting in heart "fluttering" due to lapse in medication, and severe chest pain.⁸¹

Deliberate indifference is shown against a dental hygienist where a prisoner complained that he suffered from a toothache for the better part of year, and that the hygienist saw him

once, examined a lump in his mouth, and remarked “oh, that is kind of bad,” and told him she would schedule an appointment.⁸²

A prisoner stated a valid claim where it was shown that a prior gunshot injury to his leg was so severe that he required reconstructive surgery and was unable to walk without the assistance of a cane or crutches. An officer denied him use of the cane and crutches and forced him to walk without assistance, resulting in unnecessary pain and suffering.⁸³

Prison officials conditioned hernia surgery on a prisoner’s release of future liability that might arise after surgery. These actions establish a -deliberate indifference to the prisoner’s Eighth Amendment right to basic medical care.⁸⁴

A prisoner experienced frequent, sometimes unbearable, pain in his left hip. He was diagnosed with avascular necrosis of his left femoral head, and was recommended for a bone graft procedure in August 1998. He received no surgery by August 1999, even though at that time, following further X-rays, a decision was made to cancel the surgery. The lengthy delay raised the issue of deliberate indifference to a serious medical need.⁸⁵

A four-hour delay in medical attention did not amount to deliberate -indifference to serious medical needs where a sexually assaulted youth told no one of the assault, the blood stain on his underwear was reasonably assumed to be evidence of gastrointestinal problems for which the youth was already being treated, emergency treatment was not required, and there was no -medical evidence indicating that the four-hour delay before he was taken to hospital worsened his medical condition.⁸⁶

A district court erred by dismissing a claim against the prison doctor and physician’s assistant. They failed to properly treat his back condition. Their lack of proper medical care subjected him to possible risks of -permanent -disability or fatal or serious injury. The doctor refused to examine him on -multiple occasions and accused him of “playing games.” When the doctor finally did examine him, he twisted the prisoner’s legs.⁸⁷

The failure to arrange for dental treatment until about six weeks after a prisoner’s written request for it, causing him to suffer further pain and -infection, violated the Eighth Amendment.⁸⁸

Evidence that a medical provider violated written policies was relevant to determining the provider’s liability for a detainee’s suicide. It showed that the provider was on notice that its employees ignored the medical needs of prisoners. Its practice of failing to act in the face of known violations of its written policies was relevant circumstantial evidence showing the provider’s knowledge and state of mind.⁸⁹

A prison physician was not deliberately indifferent to a prisoner's back pain where each time he complained of back pain, the physician examined him and prescribed ibuprofen or some other medication, sometimes issued medical lay-ins, and once a restriction on lifting. The doctor was not deliberately indifferent to his diabetes where he routinely saw the prison physician almost monthly. The physician ordered blood work every six months, frequently adjusted his insulin due to his complaints and blood test results, and ordered that his blood sugars be tested twice daily. The physician was not deliberately indifferent to his liver condition where, after the prisoner tested positive for hepatitis C, the physician referred him to a specialist, who evaluated his need for interferon testing, and the prisoner received immunization for hepatitis B.⁹⁰

The failure to establish the seriousness of need for medical treatment for a toenail fungus infection resulted in dismissal of a prisoner's lawsuit.⁹¹

The Eighth Amendment is violated where a prisoner's s hernia surgery was delayed for four years, in the face of continual "complaints of intense pain, anxiety, and limited mobility."⁹²

Claims that a detainee was denied an adequate supply of catheters, and as a result suffered recurrent bladder infections, and was not provided a proper mattress given his disability, resulting in bed sores, are not *de minimis*.⁹³

A prisoner was diagnosed with Hepatitis C. He underwent a liver biopsy to verify the diagnosis and then was treated with two separate medications. Although this treatment was successful, the prisoner complained that he was not warned about its serious side effects, and that had he known of them, he would have refused treatment. The Fourteenth Amendment right to refuse medical treatment also contains a concomitant right to information necessary to make an informed decision. The prisoner established a violation of this right by showing that the failure to provide him with necessary information caused him to undergo treatment that he would otherwise have refused and that such failure to inform was taken with deliberate indifference to his rights.⁹⁴

Deliberate indifference to a prisoner's medical needs occurred when correctional officers failed to provide him with medical treatment after he was pepper sprayed. The state's medical examiner credited spray as contributing to the prisoner's death from asphyxia. Even a layperson would have inferred from the prisoner's collapse in the medical room that he was in need of medical attention. The use of force directive gave officers actual knowledge of the risk posed by the use of pepper spray. Officers were present when the prisoner was repeatedly sprayed during cell extraction. Facts showed that the prisoner was nonresponsive to a nurse's inquiries, then collapsed in plain sight, but was never given medical treatment.⁹⁵

A jury determined that a psychiatrist's deliberate indifference and -medical malpractice

caused a prisoner's death from severe dehydration after being held for several days in a 90- to 100-degree observation room was awarded \$1.5 million in compensatory damages and \$3 million in punitive damages.⁹⁶ On remand, the district court reduced the punitive damages and awarded \$25,000 in punitive damages for deliberate indifference and \$675,000 in punitive damages for medical malpractice.⁹⁷

The deliberate and unnecessary withholding of food essential to normal health is deliberate indifference to medical needs and violates the Eighth Amendment.⁹⁸

The only physical injury suffered by a prisoner in a cell with open sewage was nausea and, while vomiting was unpleasant experience, there was no indication that his nausea was severe enough to warrant medical attention, was the symptom of some more serious malady, or had any lasting effects.

A county had been previously found in contempt for failing to implement specific steps to correct unconstitutional conditions at its jail. The county purged itself of contempt by implementing a new remedial scheme, which included direct supervision in cell blocks, improved population management, collection and utilization of data, installation of an objective classification system, improved control of gang members through creation of a Gang Intelligence Unit, improved prisoner discipline and prosecution of prisoner crimes committed within the jail, creation of a Disturbance Response Team, a provision for adequate prisoner services, creation of an effective grievance procedure, improved staff training, improved security, efforts to achieve certification and accreditation, creation of programs and activities to reduce prisoner idleness, and improved leadership.¹³¹

§ 11.6.3 —Exercise

Exercise is one of the basic human necessities protected by the Eighth Amendment.¹⁴⁷

The Fourteenth Amendment requires that pretrial detainees be granted adequate opportunities for exercise. Denial requires a legitimate governmental objective. Determining what constitutes adequate exercise requires consideration of the physical characteristics of the cell and jail and the average length of stay of the prisoners.¹⁴⁸

A failure to provide prisoners confined for more than a very short period with the opportunity for at least five hours a week of exercise outside the cell raises serious constitutional questions.¹⁴⁹

Jail officials who fail to provide each prisoner only one hour per day of exercise outside the cells create a constitutionally intolerable condition.¹⁵⁰

§ 11.6.2 —Conditions below Constitutional Minimum Standards

In *Maxwell v. Mason*,¹³⁶ the Eighth Circuit affirmed a finding of cruel and unusual punishment in the confinement of a prisoner to 14 days in a solitary cell with no clothing except undershorts and no bedding except a mattress. Correctional officers had testified that the temperature would have been at least 70 degrees, but the prisoner had testified that he huddled in the corner of his cell to stay warm. The court stated that prisoners in punitive solitary confinement should not be deprived of basic necessities, including light, heat, ventilation, sanitation, clothing, and a proper diet, and affirmed a denial of qualified immunity for two penitentiary officials.

The Seventh Circuit¹³⁷ reversed the dismissal of a prisoner's complaint that alleged being placed in solitary confinement for three days without a mattress, bedding, or blankets, and without articles of personal hygiene. It also set aside summary judgment in *Lewis v. Lane*,¹³⁸ in which two state prisoners alleged that the heat in their cells was maintained at an unreasonably low temperature during December and January and that the lack of heat was severe enough to produce physical discomfort. Consequently, an allegation of inadequate heating may state an Eighth Amendment violation.¹³⁹

A prisoner was required to live in a feces-covered cell for three days without access to cleaning supplies.¹⁴⁰

A county was liable to jail prisoners who were beaten by other jail prisoners based on deliberate indifference to a substantial risk of serious harm. The county failed to maintain the jail building. Sewage leaked from pipes, sinks and toilets were dilapidated and inoperable, windows could not be closed, shards of broken glass lay on window sills, and vermin entered the jail through windows and wall cracks. The prisoners could and did fashion weapons by vandalizing the dilapidated physical structure. Cell locks on the second floor were broken and jailers did not have a surveillance system. The jail was grossly understaffed, and had no system for segregating prisoners with mental illness or for other reasons.¹⁴¹

Constitutional rights were violated when prisoners were held outside while prison officials quelled a disturbance. The prisoners were forced to stay in a prone position for most of several days, without proper sanitation facilities, temperatures were alternately extremely hot and below freezing, and the prisoners were not given blankets or proper drinking water or food.¹⁴²

An Eighth Amendment claim was shown where a prisoner suffered a six-month deprivation of all out-of-cell exercise due to a lockdown to conduct an extensive shakedown of a prison and to implement new security measures. Reasonable officials should have known that such complete and lengthy deprivation of exercise was constitutionally questionable.¹⁴³

Constitutional rights were violated by unsanitary conditions and prolonged cold in cells, where prison employees had actual knowledge of conditions. They made daily rounds and were directly responsible for placing prisoners in inhumane conditions.¹⁴⁴

A pretrial detainee slipped in a shower and injured himself. The defendants failed to repair the shower in his unit for more than nine months even though they were alerted to the conditions in the shower area several times. The exposure of the detainee to the unsanitary and hazardous showering area for more than nine months was "sufficiently serious" to meet an objective element of a due process claim based upon conditions of his confinement.¹⁴⁵

There was fecal contamination of blankets and clothing used to sop up sewage. Improper laundering caused blankets and clothes to continue to smell of sewage even after laundering. When prisoners re-rinsed clothes, the resulting rinse water was brown.¹⁴⁶

§ 11.8 Retaliation Claims

Numerous cases litigate the allegation that prisoners have suffered retaliation by prison officials when the prisoners exercise their constitutional rights or file grievances against correctional personnel. The right to be free from retaliation for a prisoner's exercise of his First Amendment rights was "clearly established" by the 1980s.¹⁷⁰

It is not uncommon for prisoners to suffer retaliation by prison officials who are themselves accused of violating the rights of prisoners. A prisoner's complaints angered "higher-ups." There was suspect timing of an investigation, and stale evidence was used. This suggested retaliation rather than the claim that the prisoner was a member of a prison gang. Prison officials were not entitled to qualified immunity because the prohibition against retaliatory punishment was clearly established law in the Ninth Circuit.¹⁷¹

A district court properly concluded that a prisoner's claim that he was placed in administrative segregation allegedly in retaliation for his religious beliefs failed because there was evidence supporting the decision to assign the prisoner to administrative segregation irrespective of his religious beliefs.¹⁷²

A prisoner's conduct amounted to a public rebuke of the prison chaplain and members of the prison administration's staff, and was intended to, and did, incite about 50 other prisoners in a walkout from a church service. The manner of the prisoner's statement was inconsistent with his status as a prisoner. He was thus not entitled to any First Amendment protection in a claim alleging that he was transferred in retaliation for exercising his First Amendment rights.¹⁷³

A prisoner filed grievances against two correctional officers who called him names. The officers filed false reports. The prisoner was placed in segregation as a retaliatory action for invoking his constitutional right to use the prison grievance procedures.¹⁷⁴

Prison officials retaliated against prisoners for filing lawsuits by placing them in segregation.¹⁷⁵

A prisoner filed several grievances that were improperly processed. Prison officials found technical reasons to repeatedly reject his grievances, such as alleging too many issues in a single grievance or not alleging enough facts to support the issues. Prison officials falsely stated that his grievance appeal had not been filed within the required period and dismissed it and they failed to perform investigations on his grievances or provided misleading information in their responses.¹⁷⁶ A prisoner suffered retaliation through delays in his incoming and outgoing mail, harassment by a guard kicking his cell door, turning his cell light off and on, and

opening his cell trap and slamming it shut in order to startle him when he was sleeping, unjustified disciplinary charges, and improper dismissal of his grievances. Such acts constitute retaliation for the exercise of a constitutionally protected right.¹⁷⁷

Prison officials harassed a prisoner for his participation in a lawsuit. That is sufficient for free speech retaliation.¹⁷⁸

A prison official's serious threats of substantial retaliation against a prisoner for lodging a good faith grievance make any administrative remedy unavailable. There is no exhaustion requirement under the PLRA where: (1) the threat actually did deter a prisoner from lodging a grievance or pursuing a particular part of process; and (2) the threat is one that would deter a reasonable prisoner of ordinary firmness and fortitude from lodging a grievance or pursuing the part of the grievance process that the prisoner failed to exhaust.¹⁷⁹ Threats from prison officials and withholding of grievance forms rendered exhaustion inapplicable.¹⁸⁰

A prisoner was retaliated against by against three correctional officers where he had exercised his First Amendment rights by filing grievances and was then subjected to below-freezing temperatures for more than four hours during each of four consecutive nights.¹⁸¹

In the Eleventh Circuit, a prisoner's claim for retaliation in violation of his First Amendment rights can proceed with his claim for nominal damages. A lack of physical injury does not prevent a prisoner from seeking nominal damages.¹⁸²

A prisoner's claim for mental and emotional damages may proceed even in the absence of a physical injury, based upon a prison official's flagrant violation of his First Amendment rights by having the prisoner transferred, thus preventing him from seeing or paying his attorney and from seeing his emotionally disabled daughter, in retaliation for exercising his constitutionally-protected rights.¹⁸³

§ 14.5.3 —Exhaustion Completed

A prisoners' § 1983 action was not automatically rendered noncompliant with the PLRA's exhaustion requirement by the fact that not all defendants named in complaints had been named in previous administrative grievances.¹²² Dismissal of a lawsuit based on his failure to name officials in his grievances relating to his medical needs for prisoner's pancreas and Hepatitis C claims was in error.¹²³

A prisoner had filed grievances and was moving toward exhaustion when prison officials decided to withdraw the grievances because of "litigation." The grievances were returned as unresolved. The exhaustion requirement was satisfied.¹²⁴

The exhaustion requirement as to overcrowding, sleeping, and shower conditions were satisfied where a grievance complained that some cells had as few as four prisoners in them while other cells had as many as seven, that prisoners were not only forced to sleep on bare cement floors but also on other prisoners' mattresses and unwashed linens, and that prisoners were deprived of their daily showers.¹²⁵

When a prisoner had waited 196 days for a response to his grievance and none was forthcoming, he effectively exhausted his remedies.¹²⁶

A *pro se* federal prisoner's grievance forms, which alleged that U.S. Bureau of Prisons employees wrongly ignored his work restrictions, were sufficient to give prison officials the requisite fair opportunity to address a problem that later formed the basis of a prisoner's case.¹²⁷

A prisoner who files a late complaint that is nevertheless addressed by the prison system has properly exhausted his remedies.¹²⁸