INMATE CLA
42 USC
It's not like the movies.

BY ANDREA RACHIELE BARRACLOUGH, ESQ.

I don't believe I'm overstating the case when I call "The Shawshank Redemption" one of the finest films in cinematic history. Yet, despite its genius, there are more than a few cringe-worthy moments in the film. Any decent human being should deplore the treatment of Andy Dufresne and the insufferable conduct of the staff at Shawshank State Penitentiary. Even a prison defense lawyer must succumb to tears when Tommy Williams is killed or cheer when the corrupt guard Byron Hadley is arrested for his crimes against the prisoners.

Thankfully, the modern masterpiece starring Tim Robbins is fiction, and if based on any facts at all, then those that are now part of this country's past. For now, here in the world off the screen in an age where the courts and prisons have taken to heart Dostoevsky's words that the civility of a society can be judged by how it treats its prisoners, prisons afford inmates far more rights than they ever have in our country's history. Nonetheless, some prisoners will still feel aggrieved by the actions of the prison bureaucracy or its staff and elect litigation as the means to redress their grievances.

A convicted person's civil rights do not disappear as he or she crosses through the prison gates. Nevertheless, inherent to incarceration is the reality that some rights enjoyed as a civilian are necessarily curtailed to ensure the safety and security of the prison, its staff and its inmates. Restrictions on movement, required transfers between institutions, and limitations on size and quantity of property owned are just a few examples of those rights that courts have continuously held are appropriately and constitutionally limited by prisons.

AIMS UNDER § 1983: and that's a good thing.

There are three areas of law that the courts have recognized time and again as causing legitimate constitutional concern. If you represent a correctional authority, you'd be hard-pressed to go a week without reading at least one complaint alleging either excessive force under the Eighth Amendment, deliberate medical indifference under the Eighth Amendment or retaliation under the First Amendment. These are three of the most common claims that inmates assert in their 42 USC § 1983 complaints.

Excessive Force

Who hasn't watched "The Longest Yard" and cringed at the overtly abusive conduct of the guards at the beginning of the film? That's because such conduct is "repugnant to the conscience of mankind" and offends society's "idealistic concepts of dignity, civilized standards, humanity and decency."[1]

Harmonious with these ideals, the Eighth Amendment prohibits the imposition of cruel and unusual punishment upon prisoners; this has been defined as the "unnecessary and wanton infliction of pain."[2] One aspect of this concept is the prohibition of a prison's use of excessive physical force on a prisoner.

Whether force is excessive depends on whether the force was applied in a good faith effort to maintain or restore discipline, or whether it was applied maliciously and sadistically to cause harm.[3] The factors a court considers in deciding whether force was malicious or necessary include:

1. The extent of the injury suffered by the prisoner;
2. Whether the circumstances presented a need for force;

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INMATE CLAIMS UNDER 42 USC § 1983

3. Whether the amount of force used was reasonably related to the need for force;
4. Whether prison staff reasonably perceived a threat by the inmate; and
5. Whether efforts were made to temper the severity of the force used.[4]

Excessive force is most commonly pled when the inmate is the subject of a cell extraction. A cell extraction may be planned and carried out by a team of corrections officers trained in defensive tactics when an inmate presents a danger to himself or others and refuses to leave his cell upon request. Or, a cell extraction can be an unplanned event carried out by nearby correctional staff where necessitated by the dangerous conduct of an inmate. In either case, the common defense would be that the force was needed, reasonable and not overly severe. Further, documentation from the prison would be used to demonstrate the threat posed by the inmate.

Because courts must accord the prison deference in its decision making, and because the need for force rests on the subjective perception of prison staff, proving these cases to a jury from the plaintiff's side can be a challenge. However, counsel for the correctional authority must always be cognizant that the presence of significant injuries or unsupported reasons for the force could evince a malicious motive.

Deliberate Indifference to Medical Needs

Probably one of the more controversial aspects of penalogical jurisprudence is that some prisoners have better and cheaper access to healthcare than do some Americans outside of prison. While such a concept may offend some citizens, it would still be a shock to our collective human conscience if our prison system just callously ignored the sick, injured or dying. No one wants to think that Dr. Fenster from the Robert Redford film "Brubaker" is operating in real prisons. Thus, the quality of a prison's healthcare is the hallmark of the other way an inmate may bring an Eighth Amendment cruel and unusual punishment claim.

For a plaintiff to state an Eighth Amendment claim based on deficient medical treatment, he or she must show that the defendants were deliberately indifferent to his or her serious medical needs.[5] Deliberate indifference requires proof of two elements:

1. A serious medical need; and
2. The defendant's deliberate indifference in response.[6]

The second element requires proof that the defendants knew of the excessive risk to an inmate's health and disregarded the risk.[7] Negligence, gross negligence and medical malpractice do not meet this standard, nor does a disagreement about treatment alternatives between the inmate and the prison provider or the prison provider and an outside provider.[8]

Because a medical deliberate indifference claim examines the intent of the defendant and whether he or she knew that their conduct was going to cause a plaintiff serious medical harm, it can be a formidable task for an inmate plaintiff to prove subjective intent. Also, whereas other types of inmate cases are more the "he said/he said" variety, medical deliberate indifference claims have the benefit of substantial documentary evidence from the inmate's institutional medical file to support or defeat an inmate's medical claims. Still, a prison defense attorney must be aware that a jury could be offended by an obvious and major breach of medical care.

First Amendment Retaliation

In "Escape from Alcatraz," the surly warden is angered when he finds that inmate Doc has painted his portrait without permission, and thereafter permanently prevents the artist from painting while housed at the prison. Off screen, you won't find drawing privileges the focus of many complaints, but the act of retaliation certainly is.

Within the prison context, a plaintiff has a First Amendment retaliation claim where there is an assertion that a state actor took some adverse action against an inmate because of that prisoner's protected conduct, and that such action chilled the inmate's exercise of his First Amendment rights and did not reasonably advance a legitimate correctional goal.[9]

A majority of retaliation claims assert that a staff member took some adverse action (usually involving some sort of disciplinary sanction) against an inmate after he or she filed a grievance. The court typically will allow a claim alleging this to survive past initial screening based on the First Amendment right to access the courts and redress grievances. However, though these claims will generally survive the court's first look, it is a challenge for the inmate to prove the "because of" element. The defense will look to the prison documentation and show how it was another event, and not the filing of a grievance, that caused the conduct. While juries can be persuaded that the conduct was unrelated to the grievance, the timing of the conduct in relation to the grievance can be a hurdle that a prison defense lawyer will have to overcome.

A Final Lesson from the Movies

Of course, whether one or more of the big three claims can be proven at any stage of litigation depends on the evidence. Correctional authorities tend to possess documentation that refutes a good number of uncorroborated inmate claims. Inmates whose cases make it all the way to trial have to deal with the very real hurdle of overcoming the jury's preconceived notions about a prisoner's credibility. And neither

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party ever gets to have that "My Cousin Vinny" moment of presenting the Positraction revelation that ends the case with the other party throwing in the towel.

Regardless of the inmate constitutional battles to be fought, at least we know that there exists an area in which it can be fought (the courts) and an invitation allowing both parties to fairly engage in the fight (the Constitution). It is the very ability of inmates and the prisons to litigate claims such as the big three, as well as the courts' keen eye on balancing constitutional rights with real security threats, that keeps "Shawshank" and other prison films mere works of fiction or depictions of history and renders the realities of modern day prison life here in Nevada less dramatic than a Hollywood tale. **NL**

1. *Hudson v. McMillian*, 503 U.S. 1, 9-10 (1992); *Estelle v. Gamble*, 249 U.S. 97, 104 (1976) (citation omitted).
2. *Whitley v. Albers*, 475 U.S. 312, 319 (1986).
3. *See e.g. Hudson*, 503 U.S. at 6-7 (1992).
4. *Hudson*, 503 U.S. at 7.
5. *Estelle*, 429 U.S. at 104.
6. *McGuckin v. Smith*, 974 F.2d 1050, 1059 (9th Cir. 1992), *overruled on other grounds, WMX Techs, Inc. v. Miller*, 104 F.3d 1133, 1136 (9th Cir. 1997).
7. *Farmer v. Brennan*, 511 U.S. 825, 837 (1994).
8. *See Broughton v. Cutter Laboratories*, 622 F.2d 458, 460 (9th Cir. 1980) (citing *Estelle*, 429 U.S. at 105-106); *Wood v. Housewright*, 900 F.2d 1332, 1334 (9th Cir. 1990); *Toguchi v. Chung*, 391 F.3d 1051, 1058-60 (9th Cir. 2004); *Sanchez v. Vild*, 891 F.2d 240, 242 (9th Cir. 1989).
9. *Rhodes v. Robinson*, 408 F.3d 559, 567-68 (9th Cir. 2005).

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