LEGAL BULLETIN 7.1
Assaults and Beatings

Set 7: Cruel and Unusual Punishment
Bulletin 7.1
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The Eighth Amendment protects you against "cruel and unusual punishment," not only in sentencing, but also in what happens to you in prison, as to conditions of confinement, such as assaults by other inmates, abuses by officers, and medical neglect. Medical neglect is covered in our Bulletin 8.1. Conditions of confinement is reviewed in our Bulletin 7.3. This legal bulletin covers assaults and beatings.

Pre-trial detainees: If you have not been convicted then you are not technically receiving any punishment and therefore can not claim an Eight Amendment violation. If you are suffering abuses discussed here, you should claim that your Fifth Amendment "Due Process" rights are denied, since you are being punished without a trial.

The Eighth Amendment and Conditions of Confinement

The Eighth Amendment, written as part of The Bill of Rights in 1791, states that "excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted." U.S. Const. amend. VIII. The "cruel and unusual punishment" clause was originally intended to stop torture and other similar practices that occurred during the reigns of the Stuart Kings in Great Britain. However, over time the meaning of "cruel and unusual punishment" has grown. In Trop v. Dulles, 356 U.S. 86, 78 S. Ct. 590, 598 (1958), the U.S. Supreme Court stated, "the words of the Amendment are not precise, and that their scope is not static. The Amendment must draw its meaning from the evolving standards of decency that mark the progress of a maturing society."

Because the Amendment does not specify what constitutes "cruel and unusual punishment," the courts have developed certain guidelines that they follow. A punishment is "cruel and unusual" if it is disproportionate to the offense. If the punishment is too severe or harsh, compared to the general ideas of dignity, decency, and civilized standards, it is proscribed by the Eighth Amendment.

In Furman v. Georgia, 408 U.S. 238, 92 S. Ct. 2726, 2742-47 (1972), the U.S. Supreme Court stated that there is a principal inherent in the Eight Amendment that, "the state must not arbitrarily inflict a severe punishment. That the very words "cruel and unusual punishments" imply condemnation of the arbitrary infliction of severe punishments. That a punishment is

excessive under this principle if it is unnecessary, and that the infliction of a severe punishment by the state cannot comport with human dignity when it is nothing more than the pointless infliction of suffering. And, if there is a significantly less severe punishment adequate to achieve the purposes for which the punishment is inflicted, the punishment is unnecessary and therefore excessive."

The courts do not draw a distinction between "cruel" and "unusual" punishment. A punishment that qualifies as "cruel" does not need to be "unusual" to be prohibited. Likewise, a sanction that is "unusual" but not "cruel" may be covered by the Eighth Amendment. The phrase is treated as a single legal "term of art."

However, other courts have said that restrictive and possible harsh, conditions are part of the punishment that criminal offenders must expect to receive. Conditions in prisons are not suppose to be country clubs, but neither are conditions suppose to encourage hatred against society or to degrade the prisoner.

Abuses, force, failure to protect

Deliberate beatings, beatings of handcuffed inmates, and torment while tied down in "four-point," all done deliberately by officers, do take place in prisons. And, in some institutions, systematic beatings are a routine method of control (or revenge or amusement). Courts are increasingly recognizing that beatings carried out "deliberately" and "with unnecessary and wanton infliction of pain" are against the law, and in rare cases, criminal. Beatings and rape by other inmates are also violations, if it can be shown that the officers were "in reckless disregard" of your rights - in some cases even if no assault occurred.

However, if the abuse occurred during an emergency, or was not intentional, or was just a shove or rough handling, there may not be a violation.

What to do if you are physically abused, either by staff or by inmates

If you are abused, or have reason to fear that you are exposed to danger of abuse, the first step is to write down notes on everything which happens, taking down names, dates and times, and any possible witnesses. Right away you must file administrative remedies. In most systems you may file your remedies to a higher level officer if you are afraid to pass them through someone who has immediate control over you. Explain why on the form. If you can't get a form then draft a form of your own.

Next, write to the Clerk of the U.S. District Court which serves the prison where you are located for a section 1983 Complaint, if you are a state prisoner, or a section 1331 Compliant, if you are a federal prisoner. Also, be sure to obtain our Bulletin 1.1 on "Civil Actions in Federal Court," or some other self-help guide.

In your section 1983 or 1331 complaint you allege that 1) your constitutional protection (in this case) for Eighth Amendment protection from "cruel and unusual punishment" was violated, 2) that certain events occurred, and 3) that what you are asking the court to do is to require that the

abuse stop, and 4) to award you money damages. Ask for a reasonable amount in damages. You may also file a Motion for Temporary Injunction with the court to ask for an order to stop the abuse.

The following important cases set bounds on what levels of abuse goes so far as to be a violation of your Eighth Amendment rights. Quote their language when you defend that your abuse was an Eighth Amendment violation.

Standards of decency

Trop v. Dulles, quoted on page 1 of this bulletin, sets forth the standard that a violation of the Eighth Amendment is an act which offends the "evolving standards of decency that marks the progress of a maturing society." This test looks at the act itself.

Deliberate indifference in medical neglect

Estelle v. Gamble, 429 U.S. 97, 97 S. Ct. 285, 292 (1976), see also Chadwick v. Court of Common Pleas, 2006 U.S. Dist. Lexis 40125 (E.D. Pa. June 15, 2006), says that in medical problems, "acts or omissions sufficiently harmful to evidence deliberate indifference to serious medical needs" constitute "cruel and unusual punishment." The deliberate indifference standard is now being applied to define other kinds of "cruel and unusual punishment." This test looks at the intention of the official.

Deliberate indifference as to conditions

Wilson v. Seiter, 501 U.S. 294, 111 S. Ct. 2321 (1991), says that it is not enough to show that conditions are "cruel and unusual" due to overcrowding, inadequate heating, failures to protect, and so forth. To win a claim of an Eighth Amendment violation you must show that your abuse was intentionally inflicted, drawing on the "deliberate indifference" standard.

Unnecessary and wanton infliction of pain

Rhodes v. Chapman, 452 U.S. 337, 101 S. Ct. 2392 (1981), on concerning double celling, cautions that double celling may result in deprivations, but "they do not inflict pain, much less unnecessary and wanton pain," and so, are not an Eighth Amendment violation. (Wanton means: senseless, unprovoked, unjustifiable, or deliberately malicious). This test also looks at intent of the official.

However, there are exceptions where there are "disturbances" that "pose significant risks." Whitley v. Albers, 475 U.S. 312, 106 S. Ct. 1078 (1986), makes an exception to the "deliberate indifference" standard, in cases such as riots or other dangerous emergencies which present risks which knowingly may inflict injury - but within limits.

Maliciously and sadistically, for the very purpose of causing harm.

Whitley v. Albers went on to say that officers would be inflicting "cruel and unusual

punishment," even in an emergency, if they acted "maliciously and sadistically for the very purpose of causing harm." That standard is the bottom line test of "cruel and unusual punishment." Unnecessary, sadistic injuries are violations of law in any conditions.

"Standards of decency violated, even if no significant injury is caused."

The landmark U.S. Supreme Court case, Hudson v. McMillian, 503 U.S. 1, 112 S. Ct. 995 (1992), arose because a lower court denied that there had been an Eighth Amendment violation when Hudson, a convict, had been struck in the face by two officers while he was handcuffed. He has hit so violently that his lips were bruised and his dental plate broken. The lower court denied it was a violation because Hudson's wounds did not require medical attention. After being heard in the U.S. Supreme Court, then Justice Sandra Day O'Connor wrote, "when prison officials maliciously and sadistically use force to cause harm, contemporary standards of decency always are violated. This is true whether or not significant injury is caused." Id. at 1000. In this case the court looked at intent and decency, regardless of the injury.

The guideline U.S. Supreme Court cases mentioned above give you definite directions as to whether an assault, blow, or a planned beating by several officers are illegal.

The argument in Felix v. McCarthy, 939 F.2d 699 (9th Cir. 1991), points to the improper use of authority. In this case it was alleged that an officer "used his position of authority to degrade dignity." Felix, a convict who worked in the prison hospital, was mopping floors in the hospital when the alleged incident occurred. He was handcuffed, threatened, and pushed into walls by officers, after one officer deliberately spat on the floor at Felix's feet which Felix refused to clean up. The court ruled that "it is not the degree of injury which makes out a violation of the eighth amendment. Rather, it is the use of official force or authority that is intentional, unjustified, brutal, and offensive to human dignity." Id. at 702.

This case, Felix v. McCarthy, is significant as it includes "dignity" and the "abuse of authority" as within the meaning of "cruel and unusual punishment." This abuse of power took away the officer' entitlement to qualified immunity.

You must show who was responsible

If you are facing a case where officials were responsible for this or any problem, read our Bulletin 1.1, "Civil Actions in Federal Court." It explains "qualified immunity" and how to decide whom to charge with the abuse.

If you cannot prove to the satisfaction of the Court that some official was personally involved then you do not have a case. Even if you were badly hurt or suffered a real violation of your rights, you do not have a claim unless you can name some person or persons who allowed the violation to happen or who committed the injuries.

Assaults from other prisoners

Of course fights break out from time to time but, aside from that, a persistent fear of prisoners is

that they will be set upon by gangs, enemies, or insanely vengeful people. Can you state a claim against officials if you are brutalized by other inmates?

Prison officials are responsible for your safety, but they cannot be held responsible for everything that may happen. According to the standard as applied in Davidson v. Cannon, 474 U.S. 344, 106 S. Ct. 668 (1986), you must show that officials were "deliberately indifferent" or had "reckless disregard" for your safety.

In Hobbs v. Evans, 924 F.2d 774 (8th Cir. 1991), an officer told other inmates that the plaintiff had given information and was a "snitch." As a result the plaintiff was assaulted three times. The court found that the officer had acted with reckless disregard when he conveyed that information to other inmates.

In Benny v. Pipes, 799 F.2d 489 (9th Cir. 1986), the court found that six officers were acting with intention when they stood by while an inmate was physically and sexually assaulted.

In McNeal v. Macht, 763 F. Supp. 1458 (E.D. Wisc. 1991), officers who stood by when an inmate was assaulted were "deliberately indifferent" and were not entitled to qualified immunity.

In Dudley v. Stubbs, 489 U.S. 1034 (1989), the trial court found that officers acted with "deliberate indifference" when they stood by and refused to aid a prisoner who was beat by a gang of 20 to 30 fellow inmates. Notwithstanding the verdict, the magistrate found for the officers finding that the court should have followed the standard found in Whitley v. Albers because it was an "emergency" situation. The Court of Appeals for the Second Circuit reinstated the verdict finding that the "deliberate indifference" standard was proper here because it wasn't an emergency as in Whitely v. Albers, the mob in this case only wanted to hurt one prisoner. The U.S. Supreme Court denied certiorari, however, a few of the Justices dissented to the denial arguing that the proper standard was that found in Whitley v. Albers. This shows that every incident must be taken on its own facts and similar cases may have different outcomes.

Also, in Serrano v. Gonzales, 909 F.2d 8 (1st Cir. 1990), an officer was found to have violated Serrano's constitutional rights when the officer neither intervened or called for help when Serrano was repeatedly stabbed by two other inmates.

Supervisors can also be held liable for the acts of their subordinates. In Pool v. Missouri Dep't of Corrections & Human Resources, 883 F.2d 640, 645 (8th Circ. 1989), the court found that a superior may be held liable if it is shown that the superior had actual knowledge that the constitutional rights of inmates were being deprived by the acts of staff and that the superior demonstrated deliberate indifference by failing to take steps to remedy those deprivations.

However, it may not always necessary for officials to intervene in all situations. In Arnold v. Jones, 891 F.2d 1370 (8th Circ. 1989), the court found that an unarmed guard had no constitutional duty to intervene in a fight which might have caused him serious injury or worsened the situation. However, this view has been criticized, and five years after Arnold, the Eighth Circuit had retreated from this view explaining that prison officials "act with deliberate indifference to an inmate's safety when the official is present at the time of the assault and fails to

intervene or otherwise act to end the assault." Williams v. Mueller, 13 F.3d 1214, 1216 (8th Circ. 1994).

You may also have a case if an entire situation is specifically known to be dangerous, meaning, where officials know of the danger, or where the threat of violence is so substantial or pervasive that officials should have acted, yet officials failed to enforce a policy or take other reasonable steps. This is shown in Goka v. Babbit, 862 F.2d 646 (7th Cir. 1988). In this case officials allowed an inmate, who was a member of a notorious gang, to keep a broom in his cell. Goka had been threatened by the inmate and had already asked for protection before the inmate struck him in the eye with the broom handle. A lower court had found that it was enough that the inmate had received warnings, but the circuit court ruled that officials showed deliberate indifference, and callous disregard, of Goka's right to protection when they did not remove the broom, especially in view of the threats.

In Wright v. Jones, 907 F.2d 848 (8th Cir. 1990), officers were found to have violated an inmates constitutional rights when they stood by for five minutes as the inmate was beaten. Further, the court found that the officers actions showed reckless disregard when they knew that inmates had been congregating in a housing unit and that assaults had been taking place but yet they took no action. The court found that precedent showed that liability can be imposed if guards disregard a known risk.

Fear or danger even though no assault has happened

The mental torture of fearing death, beatings, or rape, is cruel punishment for those who have enemies in the prison. A dimension of the pain is that it continues for month or even years. Yet few court decisions have addressed this dimension.

In Riley v. Jeffes, 777 F.2d 143 (3rd Circ. 1985) an inmate claimed a constitutional violation by being in constant fear of robberies, rapes, and stabbings, because other inmates had keys to his cell. Even though no physical injury had occurred the court that is was sufficient to raise a constitutional violation because officers allowed the threat to continue. So, an inmate's right to be protected from violence does not require that he be physically harmed, he need only to show a pervasive risk from other inmates to claim his case.

Hudson v. McMillian, a significant case

This bulletin is dedicated to Keith Hudson who, working alone in his cell as a pro se litigant, studied law, wrote his actions, and carried his case to the U.S. Supreme Court.

Hudson v. McMillian, mentioned earlier in this bulletin, helps to fill out what the U.S. Supreme Court has ruled as to what abuses may constitute "cruel and unusual punishment" and may therefore be violations of the Eighth Amendment.

In this case the Court of Appeals for the Fifth Circuit, in revering the lower court's decision, found that to show a violation of the Eighth Amendment the prisoner must show that there was a significant injury, which resulted from the unnecessary use of force, which was unreasonable,

and was a wanton and unnecessary infliction of pain. For Hudson, the Appeals Court found that his injuries were not significant enough because they did not require medical attention.

In a very significant ruling, the U.S. Supreme Court revered the decision of the Court of Appeals. Justice Sandra Day O'Connor wrote that "when prison officials maliciously and sadistically use force to cause harm, contemporary standards of decency always are violated. This is true whether or not significant injury is caused." That the "Eighth Amendment prohibition....excludes de minimus uses of physical force [de minimus means so slight as not to matter] provided that the use of force is not...repugnant to the conscience of mankind." And that "the blows directed at Hudson...are not de minimus."

Justice Clarence Thomas wrote a dissent, which was widely criticized, saying that the majority decision stretched the cover of the Eighth Amendment too far. He stated that where the use of force by officers may be criminal "the responsibility for punishing and preventing such conduct rests not with the Federal Constitution but with the laws and regulations of the various states."

Commentators have pointed out that Thomas was correct in that criminal convictions, under state criminal codes, should be more widely used in cases of brutality committed by prison employees.

Criminal sanctions, though, are rarely applied in cases of guard brutality, as yet. The constitutional remedy is taken for granted as the way to go, partly because it takes punishment out of the hands of local courts. However, as the public becomes more aware of what "cruel and unusual punishment" permits, such convictions may become more common.