TORTS—TORTIOUS CONDUCT OF PRISON OFFICIALS—APPLICATION OF THE CIVIL RIGHTS ACT—*Williams v. Field*, 416 F.2d 483 (9th Cir. 1969).

Williams, a prisoner in a state penal institution, brought suit against prison officials, alleging violation of his constitutional rights.[1] While imprisoned, plaintiff lodged a complaint with defendants, prison authorities, concerning a threat made against his life by a fellow inmate. Despite an interview in which the inmate stated "You had better lock him up because I am going to get him,"[2] defendants failed to take any precautionary measures. The following day the inmate threw a pitcher of scalding coffee into plaintiff's face and severely beat him with the pot.

The appellate court affirmed the holding of the lower court in dismissing the complaint on the ground that mere negligence, standing alone, is insufficient to state a claim under the Civil Rights Act.[3] However, the court indicated that in appropriate circumstances actions short of intentional conduct could support a claim under the Act if a "bad faith oppressive motive" could be shown.

At common law, there was a duty imposed upon prison officials to exercise reasonable care under the circumstances to protect a prisoner from a known danger or a reasonably foreseeable hazard. In *Lamb v. Clark*,[4] the court held that it is a jailer's duty to exercise ordinary care in preventing unlawful injury to prisoners while in his custody. Some states have adhered to this proposition by enacting statutes imposing liability on prison officials who fail to exercise reasonable care over inmates.[5] On the federal level, the duty of care is also fixed by statute.[6] It provides that:

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1 Plaintiff alleged that he was denied protection from injury in violation of the cruel and unusual punishment provisions of the eighth amendment via the equal protection and due process clause of the fourteenth amendment.

2 Williams v. Field, 416 F.2d 483, 484 (9th Cir. 1969).

3 The Civil Rights Act of 1964, 17 Stat. 13, 42 U.S.C. § 1983 (1964).

4 282 Ky. 167, 169, 138 S.W.2d 350, 352 (Ct. App. 1940); *accord*, Coffin v. Reichard, 143 F.2d 443, 445 (6th Cir. 1944), which held that a prisoner is not denied his right to personal security against unlawful invasion. For discussion of jailer's liability for injury to prisoners see Annot., 14 A.L.R.2d 353 (1950). *See also* Travis v. Pinto, 87 N.J. Super. 263, 208 A.2d 828 (L. Div. 1965), which recognizes a distinction between ministerial and discretionary acts in imposing liability on prison officials for negligence. The court held that to impose liability for a discretionary act one must show malice or an evil purpose. However, where the duty is absolute, certain, and ministerial, simple negligence is sufficient to establish liability.

5 O'Dell v. Goodsell, 149 Neb. 261, 264, 30 N.W.2d 906, 909 (1948); *accord*, Smith v.

> The Bureau of Prisons, under the direction of the Attorney General, shall . . . provide for the protection, instruction, and discipline of all persons charged with or convicted of offenses against the United States. . . .

In addition, prisoners in federal penal institutions are generally permitted to sue either the United States or individual jailers under the Federal Tort Claims Act.[7]

The question of an inmate's right of action against prison authorities for deprivation of constitutional rights arose after the enactment of 42 U.S.C. § 1983. This section provides that:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

The myriad cases dealing with this Act have raised questions regarding the specific kinds of harm against which it protects and the scope of the harm which will be compensated. *Screws v. United States*[8] was the first case to shed light upon the scope of the harm by clarifying the concept "under color of law." Until *Screws*, "under color of law" had generally been limited to abridgements of federally protected rights, privileges, and immunities by actions of state officials pursuant to state law. *Screws* decided that "under color of law" could apply to either a federal or state officer acting "under color" of either a federal or state law. The Supreme Court said:

> The statute does not come into play merely because the federal law or the state law under which the officer purports to act is violated. It is applicable when . . . someone is deprived of a federal right by that action.[9]

Monroe v. Pape[10] dealt specifically with the Statute. Like *Screws*,

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Miller, 241 Iowa 625, 626, 40 N.W.2d 597, 598 (1950), which stated that aside from statutory requirements liability would still be imposed for negligent action by the sheriff.

6 62 Stat. 849, 18 U.S.C. § 4042 (1969).

7 Winston v. United States, 305 F.2d 253 (2d Cir. 1962), *aff'd sub nom.*, United States v. Muniz, 374 U.S. 150 (1963); *see also* Rayonier Inc. v. United States, 352 U.S. 315 (1957); this is the leading case on the purpose, scope, and application of the Federal Tort Claims Act. *Contra*, Jones v. United States, 249 F.2d 864 (7th Cir. 1957).

8 325 U.S. 91 (1945), this case dealt with the imposition of a criminal penalty for the wilful deprivation, "under color of law," of any rights, privileges or immunities secured or protected by the Constitution of the United States.

9 *Id.* at 108.

10 365 U.S. 167 (1961).

it too rejected the proposition that "under color of law" included only action taken by officials pursuant to state law. The purpose of the Statute, said the Court, was to provide a supplemental remedy to state law by affording a federal right in federal courts because of the fear that prejudice, passion, or neglect might prevent the proper enforcement of state laws.[11] Moreover, *Monroe* enlarged the scope of the damage remedy created in the Act by applying the *Screws* principle to the field of civil litigation. The remedial reach of the Act now embraces tortious conduct violative of an individual's civil rights even though actionable under state law. In a most dramatic statement, the Court ruled that allegation of a purpose or specific intent to discriminate or deprive one of a constitutional right is not essential to the statement of a claim predicated on the Statute. Every person is to be judged by the "natural consequences" of his actions. In effect, a new type of tort came into existence—the invasion, "under color of law," of a citizen's constitutional rights.[12]

Where police officials are concerned, complaints under the Act have withstood motions to dismiss if there was a direct infringement by the police of another's constitutionally protected rights. In *Hughes v. Noble*,[13] the court recognized a valid claim under the Statute where the plaintiff was jailed without just cause or provocation for thirteen hours. During this time he was neither permitted to call anyone nor medically treated for injuries he had received. Similarly, the court in *Cohen v. Norris*[14] held that there was a bona fide complaint where five police officers allegedly subjected plaintiff to unreasonable searches and seizures.[15]

Since *Monroe*, the concept of the "constitutional tort" has followed an abstruse but interesting pattern. This is particularly true with respect to the liability of prison officials to inmates. A sizable number of lower court cases subsequent to *Monroe* have permitted complaints based on physical violence and abuse perpetrated by prison guards and administrators on prisoners. In *Brown v. Brown*,[16] and *Wiltsie v.*

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11 *Id.* at 180.

12 *Id.* at 187, the proposition as to the immateriality of specific intent has gained widespread approval; *see* Roberts v. Trapnell, 213 F. Supp. 49 (E.D. Pa. 1962); Selico v. Jackson, 201 F. Supp. 475 (S.D. Cal. 1962).

13 295 F.2d 495 (5th Cir. 1961).

14 300 F.2d 24 (9th Cir. 1962).

15 Plaintiff alleged four overt acts in his complaint. They consisted generally of warrantless searches and seizures without probable cause, committed in the presence of others in order to humiliate him, and with an intent to inflict injury by striking him in his private parts.

16 368 F.2d 992 (9th Cir. 1966), *cert. denied*, 385 U.S. 868 (1966).

California Department of Corrections,[17] the convicts alleged that their constitutional rights were violated by prison officials who had beaten them. In *Brown*, the court said that the Federal Civil Rights Act created a cause of action to remedy deprivations of constitutional rights by persons acting "under color of law" and that persons confined in state prisons are within the protective cloak of this Statute.[18]

A particularly fertile field of litigation involves the question of a prisoner's right to practice his religion. If the inmate alleges clearly discriminatory acts by his keepers the trend of cases indicate that his complaint will be upheld against a motion to dismiss. In *Williford v. People of California*,[19] the court denied a motion to dismiss the complaint in which plaintiff alleged that he had been systematically harassed as a Black Muslim by unwarranted solitary confinement. In *Cooper v. Pate*,[20] the Supreme Court reversed the lower court's action in sustaining a motion to dismiss and decided that the complaint, alleging defendant's refusal to allow plaintiff to purchase certain religious publications due to his religious beliefs, was well grounded.

The versatility of the Act is demonstrated by its use and attempted use in cases dealing with alleged negligence of prison officials in withholding and administering medical treatment. In this particular area no hard and fast rule has been laid down. Complaints were dismissed in *Snow v. Gladden*[21] and *United States ex rel. Gittlemacker v. Commonwealth of Pennsylvania*.[22] In *Snow*, the court dismissed the complaint even though it alleged that the prisoner suffered physical pain and mental anguish due to the refusal of prison officials to continue an ulcer diet for him. The complaint was also dismissed in *Gittlemacker* where it alleged improper medical treatment. The rationale appears to have been that it failed to establish an invasion of rights guaranteed by the Federal Constitution. A case similar to *Snow* but reaching an opposite conclusion is *Redding v. Pate*.[23] There, the inmate's allegations, that he was an epileptic who suffered intense daily headaches for which he received inadequate treatment, were held sufficient to state a claim under the Statute. A valid claim was also recognized in *Edwards v. Duncan*,[24] where the convict alleged that he suffered from a heart

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17 406 F.2d 515 (9th Cir. 1968).
18 368 F.2d at 993.
19 352 F.2d 474 (9th Cir. 1965).
20 378 U.S. 546 (1964).
21 338 F.2d 999 (9th Cir. 1964).
22 281 F. Supp. 175 (E.D. Pa. 1968), *aff'd*, 413 F.2d 84 (3d Cir. 1969).
23 220 F. Supp. 124 (N.D. Ill. 1963).
24 355 F.2d 993 (4th Cir. 1966).

condition and was deprived of medical care even though he had officially complained. The deprivation of reasonable medical care, the court said, is neither a necessary nor a reasonable concomitant of imprisonment and hence judicial review is permitted.[25]

Typical of the overall ambiguity in this area is the protection accorded a prisoner's freedom of communication, particularly where it involves access to the courts. In *Weller v. Dickson*,[26] relief was denied two prisoners who alleged that they were rejected timely access to the courts because the prison authorities refused to type and mail legal documents on the day they requested. In *Smart v. Heinze*,[27] the court dismissed a complaint which alleged that the resident notary public refused to notarize the plaintiff's petition for habeas corpus on the ground that it was not prepared on forms required by district court rules. On the other hand, in *Edwards v. Duncan*,[28] the court denied a motion to dismiss where the prisoner alleged that prison administrators employed pressure tactics to force him to withdraw a suit against them and seized his legal papers in connection with that suit. And in *DeWitt v. Pail*,[29] the complaint was also sustained where it alleged that prison officials, as a disciplinary measure, had confiscated legal papers necessary to the prisoner's appeal. This sanction was imposed because the prisoner was purportedly assisting his fellow inmates with legal problems.

If there is any similarity in the preceding cases, it is that where prison officials directly act upon prisoners in such a way as to "shock one's conscience" and deprive them of their constitutional rights, a cause of action will lie under 42 U.S.C. § 1983. This conclusion finds support in *United States ex rel. Knight v. Ragen*,[30] where the court said that internal matters in state penitentiaries are the sole concern of the States, and the federal courts will not inquire concerning them except where *unusual or extraordinary circumstances are shown*.[31] (Emphasis added). It seems, therefore, that in a prison setting, some type of intentional conduct or motive to discriminate must be alleged in order for a claim to be stated under the Statute. Such a proposition, however, is dangerously close to conflicting with the rule that a purpose

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25 *Id.* at 994.

26 314 F.2d 598 (9th Cir. 1963), *cert. denied*, 375 U.S. 845 (1963).

27 347 F.2d 114 (9th Cir. 1965), *cert. denied*, 382 U.S. 896 (1965).

28 355 F.2d 993 (4th Cir. 1966).

29 366 F.2d 682 (9th Cir. 1966).

30 337 F.2d 425 (7th Cir. 1964), *cert. denied*, 380 U.S. 985 (1965).

31 *Id.* at 426.

to discriminate or deprive one of his constitutional rights is not required to state a claim under the Act.[32]

The weight of authority supports the proposition that an unintentional common law tort, or mere negligence, standing alone, by a prison official acting "under color of law," cannot support a claim for deprivation of a prisoner's constitutional rights. Accordingly, the court in *Gittlemacker* said that "[t]ortious conduct, in and of itself, is not sufficient to establish [an] invasion of rights guaranteed by the federal constitution."[33]

From the foregoing it would seem that a complaint alleging anything short of an intentional tort would ordinarily be defeated by a motion to dismiss. However, this somewhat rigid rule is enlarged by *Huey v. Barloga*,[34] in which the court held that the invasion of one's federally protected rights need not be intentional, but only negligent. Though the court employed the phrase "merely negligent," it appears to have expounded a broader rule than the facts of the case warrant.[35] In *Huey*, a Black college student seeking employment in Cicero, Illinois, was beaten to death by a group of at least four white youths. At this time, Cicero was experiencing racial tensions and the very presence of Blacks on the public streets constituted a hazard to their personal safety. It can be reasonably inferred, therefore, that the inaction of the police under these circumstances amounted to something more than simple negligence. Thus, *Huey's* holding would more properly appear to be that negligent conduct, in the appropriate circumstances, will support an action under the Act. The real obscurity, then, as to whether allegations in a complaint state a valid claim under the Statute seems to lie somewhere between the delimiting boundaries of intentional, outrageous conduct and merely negligent conduct.

The effect of *Huey* upon the inmate-jailer relationship remained unsettled until *Williams v. Field*. The "bad faith oppressive motive" test proffered by the *Williams* court seems to follow *Huey* and prescribes the standard needed to clarify the nebulous area between intentional and unintentional conduct. Nevertheless, the application of this standard by the court in *Williams* has the effect of repudiating *Huey* and following the direct, intentional concept. Given the *Williams* fact situation, it is difficult to understand how the court could fail to visualize the strong possibility of a "bad faith motive." Such a failure makes it an arduous task indeed to imagine a factual

32 Cases cited note 12 *supra*, for reference to specific intent.

33 281 F. Supp. at 177.

34 277 F. Supp. 864 (N.D. Ill. 1967).

35 *Id.* at 872.

setting in which there will be a "bad faith motive" constituting a valid claim under the Statute.

While it is understandable that mere negligence will not constitute a deprivation of constitutionally protected rights in a prison situation, the distinction between the affirmative action of a prison official and inaction, which under certain circumstances amounts to affirmative action, is a tenuous one and should be abolished. The "bad faith motive" test is a reasonable solution to this significant problem, but one would hope to see a more meaningful interpretation of it than was found in the *Williams* case.