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|  | **Appellate History:**Requested |
|   | **Citing Decisions:**None Applied |
|  | **Other Citing Sources:**None Applied |
|  | **Table Of Authorities:**Not Requested |

***Shepard's®:***[**Davis v. Rennie**](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:43XP-X7H0-0038-X0VJ-00000-00) 264 F.3d 86,2001 U.S. App. LEXIS 19663: (1st Cir. Mass. Sept. 5, 2001)

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| No negative **subsequent appellate history** |

**Appellate History (5)**

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| **Prior** |
| 1. | [**Davis v. Rennie**](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S8R-1Y50-0038-Y4BN-00000-00), 997 F. Supp. 137, 1998 U.S. Dist. LEXIS 3201  |
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|  | **Court:** D. Mass. | **Date:** Feb. 25, 1998 |
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| 2. |  **Citation you *Shepardized*™****Subsequent appeal at:**[**Davis v. Rennie**](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:43XP-X7H0-0038-X0VJ-00000-00), 264 F.3d 86, 2001 U.S. App. LEXIS 19663  |
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|  | **Court:** 1st Cir. Mass. | **Date:** Sept. 5, 2001 |
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| 3. | **Related proceeding at and****Decision reached on appeal by:**[**Davis v. Coakley**](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5GYD-4131-F04K-H01C-00000-00), 802 F.3d 128, 2015 U.S. App. LEXIS 16657  |
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|  | **Court:** 1st Cir. Mass. | **Date:** Sept. 18, 2015 |
| **Subsequent** |
| 4. |  **Later proceeding at:**[**Davis v. Rennie**](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:44RH-W880-0038-Y0CB-00000-00), 178 F. Supp. 2d 28, 2001 U.S. Dist. LEXIS 21227  |
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|  | **Court:** D. Mass. | **Date:** Dec. 12, 2001 |
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| 5. |  **Writ of certiorari denied:**[**Rennie v. Davis**](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:45TJ-KHH0-0060-81NN-00000-00), 535 U.S. 1053, 122 S. Ct. 1909, 152 L. Ed. 2d 820, 2002 U.S. LEXIS 3235, 70 U.S.L.W. 3695  |
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|  | **Court:** U.S. | **Date:** May 13, 2002 |

**Citing Decisions (141)**

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| **Analysis:**Distinguished by (11), Followed by (28), Cited in Dissenting Opinion at (3), Explained by (3), Harmonized by (1), "Cited by" (100) |
| **Headnotes:**HN31 (34), HN30 (28), HN12 (17), HN4 (16), HN38 (10), HN17 (9), HN18 (8), HN37 (8), HN26 (7), HN34 (7), HN7 (7), HN36 (6), HN16 (5), HN23 (5), HN27 (5), HN3 (5), HN5 (4), HN2 (3), HN24 (3), HN35 (3), HN6 (3), HN11 (2), HN21 (2), HN9 (2), HN10 (1), HN19 (1), HN20 (1), HN25 (1), HN8 (1) |

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| **1st Circuit - Court of Appeals** |
| 1. | [**Shervin v. Partners Healthcare Sys.**](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5H3W-DDK1-F04K-H013-00000-00), 804 F.3d 23, 2015 U.S. App. LEXIS 17688, 98 Fed. R. Evid. Serv. (CBC) 922  |
|  |  **Followed by:** 804 F.3d 23 p.47See DeCaro v. Hasbro, Inc., 580 F.3d 55, 61 (1st Cir. 2009).  ... We review for abuse of discretion the particular wording chosen to convey a concept to the jury. See Testa v. Wal-Mart Stores, Inc., 144 F.3d 173, 175 (1st Cir. 1998). That inquiry focuses on whether the instruction "adequately illuminate[d] the law applicable to the controverted issues in the case without unduly complicating matters or misleading the jury." Id.; see Davis v. Rennie, 264 F.3d 86, 108 (1st Cir. 2001). **(HN19)** |
|  | **Discussion:**  | **Court:** 1st Cir. Mass. | **Date:** Oct. 9, 2015 | **Headnotes:**: HN19 |
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| 2. | [**Davis v. Coakley**](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5GYD-4131-F04K-H01C-00000-00), 802 F.3d 128, 2015 U.S. App. LEXIS 16657  |
|  |  **Cited by:** 802 F.3d 128 p.131... **Davis v. Rennie, 264 F.3d 86, 93-95(1st Cir. 2001)** . Appellant has incorporated much of our accounting of these facts in the complaint. In August 1996, Jason filed suit under 42 U.S.C. § 1983 and the Massachusetts Civil Rights Act, Mass. Gen. Laws ch. 12, § 11I , alleging that the mental health care workers (and their supervisors) violated his civil rights. The jury found for Davis against the six mental health care workers and the nurse, 2 The six healthcare workers were Phillip Bragg, ... |
|  | **Discussion:**  | **Court:** 1st Cir. Mass. | **Date:** Sept. 18, 2015 | **Headnotes:**: HN4, HN37, HN38 |
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| 3. | [**Fresenius Med. Care Holdings, Inc. v. United States**](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5CWW-KFR1-F04K-H004-00000-00), 763 F.3d 64, 2014 U.S. App. LEXIS 15536, 114 A.F.T.R.2d (RIA) 5688, 2014-2 U.S. Tax Cas. (CCH) P50416  |
|  |  **Cited by:** 763 F.3d 64 p.73... claims of instructional error not seasonably advanced in the trial court are waived and cannot be broached for the first time on appeal. See, e.g., Ji v. Bose Corp ., 626 F.3d 116 , 125 (1st Cir. 2010) ; Muñiz v. Rovira , 373 F.3d 1 , 6-7 (1st Cir. 2004) ; **Davis v. Rennie, 264 F.3d 86, 100(1st Cir. 2001)** ; Wells Real Estate, Inc. v. Greater Lowell Bd. of Realtors , 850 F.2d 803 , 809 (1st Cir. 1988) . So it is here. 7 To be sure, we have some highly circumscribed discretion ... |
|  | **Discussion:**  | **Court:** 1st Cir. Mass. | **Date:** Aug. 13, 2014 | **Headnotes:**: HN26 |
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| 4. | [**Gemini Investors, Inc. v. Ameripark, Inc.**](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:82J9-NJF1-652P-Y00D-00000-00), 643 F.3d 43, 2011 U.S. App. LEXIS 12700  |
|  |  **Cited by:** 643 F.3d 43 p.48... and Gemini seem to agree that the fact that a general verdict was entered will not prevent an improper instruction from resulting in a new trial unless this court can be reasonably sure that the jury relied on an alternative, permissible basis in reaching its verdict. See Gillespie v. Sears, Roebuck & Co ., 386 F.3d 21 , 29-31 (1st Cir. 2004) ; **Davis v. Rennie, 264 F.3d 86, 105-06(1st Cir. 2001)** . Because we reject Gemini's contention that the instructions were flawed, we need not ... |
|  | **Discussion:**  | **Court:** 1st Cir. Mass. | **Date:** June 23, 2011 | **Headnotes:**: HN17 |
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| 5. | [**Rodriguez-Garcia v. Miranda-Marin**](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:7YS2-X2K1-652P-Y008-00000-00), 610 F.3d 756, 2010 U.S. App. LEXIS 12636  |
|  |  **Cited by:** 610 F.3d 756 p.772... direct or indirect theory of liability. Where a general verdict or special verdict question encompasses multiple claims or multiple theories of liability, one of which is unsupported by the evidence or otherwise defective, "a new trial is usually warranted." See Mass. Eye & Ear Infirmary v. QLT Phototherapeutics, Inc ., 552 F.3d 47 , 73 (1st Cir. 2009) ; see also **Davis v. Rennie, 264 F.3d 86, 105-06(1st Cir. 2001)** . However, this rule is "by no means rigid;" instead, "we apply a generous ... |
|  | **Discussion:**  | **Court:** 1st Cir. P.R. | **Date:** June 21, 2010 | **Headnotes:**: HN17 |
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| 6. | [**Butynski v. Springfield Terminal Ry.**](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:7XM3-8NW0-YB0V-C00X-00000-00), 592 F.3d 272, 2010 U.S. App. LEXIS 1453  |
|  |  **Cited by:** 592 F.3d 272 p.276... We will not overturn either the lower court's decision to instruct on an issue or its eschewal of judgment as a matter of law unless, at a bare minimum, the record reveals an insufficient evidentiary basis for the decision. See, e.g., **Davis v. Rennie, 264 F.3d 86, 108-09(1st Cir. 2001)** (jury instruction); Zimmerman , 262 F.3d at 75 (judgment as a matter of law). Here, the congruence of these standards is patent. In the last analysis, each claim of error depends on a showing that the ... |
|  | **Discussion:**  | **Court:** 1st Cir. Mass. | **Date:** Jan. 22, 2010 | **Headnotes:**: HN20 |
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| 7. | [**Meuser v. Fed. Express Corp.**](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4W70-DJR0-TXFX-335J-00000-00), 564 F.3d 507, 2009 U.S. App. LEXIS 9427, 28 I.E.R. Cas. (BNA) 1793  |
|  |  **Cited by:** 564 F.3d 507 p.516... , cert. denied , 513 U.S. 868 , 115 S. Ct. 188 , 130 L. Ed. 2d 122 (1994) (internal citations modified); see also Davignon v. Hodgson , 524 F.3d 91 , 112 (1st Cir. 2008) ; **Davis v. Rennie, 264 F.3d 86(1st Cir. 2001)** ; Haufler v. Zotos , 446 Mass. 489 , 845 N.E.2d 322 , 335 (Mass. 2006) . Appellant argues that the district court mischaracterized the incidents as (a collection of minor, possibly harassing incidents [which] cannot be sufficient to satisfy the definition of threatening ... |
|  | **Discussion:**  | **Court:** 1st Cir. Mass. | **Date:** May 4, 2009 | **Headnotes:**: HN24 |
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| 8. | [**Mendez-Matos v. Municipality of Guaynabo**](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4VPC-69T0-TXFX-33CD-00000-00), 557 F.3d 36, 2009 U.S. App. LEXIS 3702  |
|  |  **Distinguished by:** 557 F.3d 36 p.54For example, "particularly egregious conduct that results in relatively low actual damages can support a higher ratio than conduct that is less reprehensible." Romano, 233 F.3d at 655 (internal quotation marks and citation omitted); see BMW, 517 U.S. at 582. We do not have that situation here. Although the Mayor's conduct was reprehensible, it was not "particularly egregious" in comparison to defendants' conduct in other cases supporting substantial punitive awards.  ... See, e.g., Davis, 264 F.3d at 91, 117 (repeated punching of mental patient); Casillas-Diaz, 463 F.3d at 82 (suspect beaten unconscious by police); Romano, 233 F.3d at 673 (intentional violation of anti-discrimination law).  **(HN38)**Although Mendez-Ayala argues that this Court has upheld far larger punitive awards, the facts in those cases differ in critical respects from the facts here. For example, we have affirmed large punitive awards where the plaintiff suffered significant physical injury. In Davis, where we affirmed a punitive damages award of over $ 1 million, the plaintiff was thrown to the ground and repeatedly punched in the head. Davis, 264 F.3d at 94; see also Casillas-Diaz, 463 F.3d at 86. Where we have approved large awards in the absence of violence, the conduct at issue was typically intentional or malicious, such as discrimination.  **(HN38)** **Followed by:** 557 F.3d 36 p.52We review de novo the district court's determination of the constitutionality of the jury's punitive damages award. Cooper Indus., Inc. v. Leatherman Tool Group, Inc., 532 U.S. 424, 436, 121 S. Ct. 1678, 149 L. Ed. 2d 674 (2001); Davis, 264 F.3d at 116. De novo review is appropriate here because a punitive award implicates constitutional questions of due process.  **(HN26,HN34,HN37)**As the Supreme Court has repeatedly stated, and as we have long recognized, the degree of reprehensibility is the most important guidepost in the BMW test. State Farm, 538 U.S. at 419; Casillas-Diaz, 463 F.3d at 85; Davis, 264 F.3d at 116. In measuring the reprehensibility of a defendant's conduct, the Supreme Court has instructed us to consider whether: **(HN3)**BMW, 517 U.S. at 583.  ... In the case of section 1983, however, Congress did not address damage awards; therefore, we compare the present award with awards we have permitted in similar section 1983 suits. Davis, 264 F.3d at 117 (citing Zimmerman, 262 F.3d at 82).  **(HN38)** **Cited by:** 557 F.3d 36 p.47... . We have regularly applied this due process limit to punitive damage awards under federal law, particularly in section 1983 actions. See, e.g., Bisbal-Ramos v. City of Mayagez , 467 F.3d 16 , 27 (1st Cir. 2006) ( section 1983 ); **Davis v. Rennie, 264 F.3d 86, 116(1st Cir. 2001)** (same); Romano v. U-Haul Intern ., 233 F.3d 655 , 672 (1st Cir. 2000) (Title VII). During the course of the trial, the district court ruled that the federal right at issue in the section 1983 action ... |
|  | **Discussion:**  | **Court:** 1st Cir. P.R. | **Date:** Feb. 24, 2009 | **Headnotes:**: HN3, HN26, HN34, HN35, HN37, HN38 |
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| 9. | [**Mass. Eye & Ear Infirmary v. QLT Phototherapeutics, Inc.**](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4VCH-HJ60-TXFX-329M-00000-00), 552 F.3d 47, 2009 U.S. App. LEXIS 560  |
|  |  **Cited by:** 552 F.3d 47 p.73... On the contrary, we have consistently recognized that a jury is "likely to prefer a better supported theory to one less supported," and consequently, we apply a generous harmless error analysis in order to determine whether it is reasonably likely that the jury in fact relied on a theory with adequate evidentiary support. Gillespie , 386 F.3d at 30 ( citing **Davis v. Rennie, 264 F.3d 86, 106(1st Cir. 2001))** . The litmus test of such a harmless error review is whether the appellant was ... |
|  | **Discussion:**  | **Court:** 1st Cir. Mass. | **Date:** Jan. 12, 2009 | **Headnotes:**: HN16, HN17 |
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| 10. | [**Casillas-Diaz v. Officer Romualdo Palau**](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4KXP-92B0-0038-X0K0-00000-00), 463 F.3d 77, 2006 U.S. App. LEXIS 23740  |
|  |  **Followed by:** 463 F.3d 77 p.85In evaluating the reasonableness of a punitive damage award ancillary to a violation of section 1983, we consider "(1) the degree of reprehensibility of a defendant's conduct; (2) the ratio between punitive and actual and potential damages; and (3) a comparison of the punitive damages figure and other civil and criminal penalties imposed for comparable conduct." Davis v. Rennie, 264 F.3d 86, 116 (1st Cir. 2001) (quoting Romano v. U-Haul Int'l, 233 F.3d 655, 672-73 (1st Cir. 2000)). We will not disturb such an award "unless we find it certain that the amount in question exceeds that necessary to punish and deter the alleged misconduct." Borges Colon, 438 F.3d at 21 (citation and internal quotation marks omitted).  **(HN38)**To add fuel to the fire, a punitive damage award may be "justified not only by defendants' actions on [the date in question] but also by their subsequent behavior." Davis, 264 F.3d at 115 (quoting Hall v. Ochs, 817 F.2d 920, 927 (1st Cir. 1987)). Here, the jury reasonably could have concluded that the subsequent filing of felony charges against Casillas and Lopez demonstrated the officers' improper motives and callous indifference to the plaintiffs' rights. Comparing the testimony of the defendants with that of the plaintiffs' witnesses, "a factfinder might infer that the stark clash could not have resulted from innocent misrecollection and that its intentional quality intensified any need the jury may have found for punishment and deterrence." Id. at 116 (quoting Hall, 817 F.2d at 928). **(HN34)**In drafting section 1983, Congress did not make any reference to the quantum of damages.  ... We may, therefore, consider awards in similar cases to help determine if particular punitive damages in a given case appear excessive. See Davis, 264 F.3d at 117. **(HN38)**A canvass of punitive damage awards upheld in comparable section 1983 cases makes it nose-on-the-face plain that the punitive damages granted in this case are not out of line. See, e.g., Estate of Moreland v. Dieter, 395 F.3d 747, 751 (7th Cir. 2005) (approving award of $ 27,500,000 in punitive damages in an excessive force case); Davis, 264 F.3d at 116-17 (affirming award of $ 1,025,000 in punitive damages in excessive force case); Gutierrez-Rodriguez v. Cartagena, 882 F.2d 553, 581 (1st Cir. 1989) (upholding a punitive damage award of $ 600,000); see also Nydam, 948 F.2d at 811 (characterizing as "restrain[ed]" an award of $ 65,000 in compensatory damages and $ 200,000 in punitive damages for excessive force). In fine, there is no indication that the last BMW factor undermines the integrity of the present punitive damage award. **(HN37,HN38)** |
|  | **Discussion:**  | **Court:** 1st Cir. P.R. | **Date:** Sept. 19, 2006 | **Headnotes:**: HN34, HN37, HN38 |
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| 11. | [**Rodriguez-Marin v. Rivera-Gonzalez**](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4J8V-JC70-0038-X4BJ-00000-00), 438 F.3d 72, 2006 U.S. App. LEXIS 3658, 152 Lab. Cas. (CCH) P60149  |
|  |  **Cited by:** 438 F.3d 72 p.85... compensatory damages to plaintiff's family, and $ 250,000 in punitive damages); see also Tapalian **v.** Tusino , 377 F.3d 1 , 8-9 (1st Cir. 2004) (upholding an award $ 58,843 in compensatory damages and $ 150,000 in punitive damages); **Davisv.Rennie, 264 F.3d 86, 117(1st Cir. 2001)** (awarding punitive damages of about one million dollars, ten times the amount of compensatory damages); Romano , 233 F.3d at 673 (awarding punitive damages nineteen times greater than compensatory damages). **V.** ... |
|  | **Discussion:**  | **Court:** 1st Cir. P.R. | **Date:** Feb. 16, 2006 | **Headnotes:**: HN37, HN38 |
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| 12. | [**Torres-Rivera v. O'Neill-Cancel**](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4G37-1J00-0038-X51F-00000-00), 406 F.3d 43, 2005 U.S. App. LEXIS 7601  |
|  |  **Explained by:** 406 F.3d 43 p.54 **Cited by:** 406 F.3d 43 p.51... Rivera **v.** Rhode Island , 402 F.3d 27 , 34 (1st Cir. 2005) . As Martinez explains, the DeShaney substantive due process rule 6 As we recognized in **Davisv.Rennie, 264 F.3d 86(1st Cir. 2001)** , a "set of unique rules has developed" for involuntarily committed mental patients. Id. at 98 (quoting Hasenfus **v.** LaJeunesse , 175 F.3d 68 , 71 (1st Cir. 1999)) . does not apply where it is an on-duty police officer acting under color of law whose violence causes the injury. ... |
|  | **Discussion:**  | **Court:** 1st Cir. P.R. | **Date:** May 3, 2005 | **Headnotes:**: HN3, HN30, HN31, HN34 |
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| 13. | [**Baron v. Suffolk County Sheriff's Dep't**](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4FTS-0X20-0038-X2H8-00000-00), 402 F.3d 225, 2005 U.S. App. LEXIS 4964, 151 Lab. Cas. (CCH) P59996  |
|  |  **Cited by:** 402 F.3d 225 p.243... it is impossible to tell whether consideration of the improperly submitted claims may have affected the verdict." Lattimore **v.** Polaroid Corp. 99 F.3d 456 , 468 (1st Cir. 1996) . Although we have previously considered the possibility that a party forfeited a claim based on this rule by failing to request a special verdict, see **Davisv.Rennie, 264 F.3d 86, 106-07(1st Cir. 2001)** , we recently rejected the application of plain error review in this context. See Gillespie **v.** ... |
|  | **Discussion:**  | **Court:** 1st Cir. Mass. | **Date:** Mar. 29, 2005 | **Headnotes:**: HN36 |
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| 14. | [**Gillespie v. Sears, Roebuck & Co.**](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4DGN-2WH0-0038-X32B-00000-00), 386 F.3d 21, 2004 U.S. App. LEXIS 20887, CCH Prod. Liab. Rep. P17164  |
|  |  **Cited by:** 386 F.3d 21 p.30... Our own approach is by no means rigid. Recognizing that a jury is likely to prefer a better supported theory to one less supported, we have generously applied the harmless error concept to rescue verdicts where we could be reasonably sure that the jury in fact relied upon a theory with adequate evidentiary support. See **Davis v. Rennie, 264 F.3d 86, 106(1st Cir. 2001)** , cert. denied , 535 U.S. 1053 , 152 L. Ed. 2d 820 (2002) ; Brochu v. Ortho Pharm. Corp. , 642 F.2d 652 , 662 (1st ... |
|  | **Discussion:**  | **Court:** 1st Cir. Mass. | **Date:** Oct. 6, 2004 | **Headnotes:**: HN16, HN17 |
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| 15. | [**Tapalian v. Tusino**](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4CXM-8KY0-0038-X1W2-00000-00), 377 F.3d 1, 2004 U.S. App. LEXIS 15252, 64 Fed. R. Serv. (Callaghan) 1269  |
|  |  **Followed by:** 377 F.3d 1 p.8Finally, Tusino contends that the evidence adduced at trial does not support the great disparity between the $ 58,843 compensatory damages award and the $ 150,000 punitive damages award. In assessing the reasonableness of a punitive damages award, we consider (i) the degree of reprehensibility of the defendant's conduct; (ii) the ratio between the punitive damages and the actual and potential damages; and (iii) the comparison between the punitive damages figure and other civil and criminal penalties imposed for comparable conduct. See Davis v. Rennie, 264 F.3d 86, 116 (1st Cir. 2001).  **(HN38)**In assessing the reasonableness of a punitive damages award, we consider (i) the degree of reprehensibility of the defendant's conduct; (ii) the ratio between the punitive damages and the actual and potential damages; and (iii) the comparison between the punitive damages figure and other civil and criminal penalties imposed for comparable conduct. See Davis v. Rennie, 264 F.3d 86, 116 (1st Cir. 2001).  ... The first criterion (reprehensibility) is by far "the most important indicium," id., and, after careful consideration, we have no hesitation in concluding that the prolonged personal vendetta Tusino conducted against Tapalian for having rejected Tusino's requests amply demonstrates the requisite degree of reprehensibility.  **(HN38)** |
|  | **Discussion:**  | **Court:** 1st Cir. Mass. | **Date:** July 23, 2004 | **Headnotes:**: HN38 |
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| 16. | [**Limone v. Condon**](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4CMB-D420-0038-X2SW-00000-00), 372 F.3d 39, 2004 U.S. App. LEXIS 11577  |
|  |  **Cited by:** 372 F.3d 39 p.48... 925 (1st Cir. 1987) . General statements of the law are capable of conveying fair warning. See United States v. Lanier , 520 U.S. 259 , 270-71 , 137 L. Ed. 2d 432 , 117 S. Ct. 1219 (1997) ; **Davis v. Rennie, 264 F.3d 86, 114(1st Cir. 2001)** , cert. denied , 535 U.S. 1053 , 152 L. Ed. 2d 820 , 122 S. Ct. 1909 (2002) . It follows logically that, in some situations, "a general constitutional rule already identified in the decisional law may apply with obvious clarity to the specific ... |
|  | **Discussion:**  | **Court:** 1st Cir. Mass. | **Date:** June 10, 2004 |
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| 17. | [**Acevedo-Garcia v. Monroig**](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4B5C-XYM0-0038-X37X-00000-00), 351 F.3d 547, 2003 U.S. App. LEXIS 24475, 149 Lab. Cas. (CCH) P59820  |
|  |  **Cited by:** 351 F.3d 547 p.570... . Our previous cases reflect a marked reluctance to find plain error in civil cases: "Especially in a civil case this is a very hard test to meet because over and above plain error, it requires a showing both of prejudice and a miscarriage of justice or something of this magnitude." Fraser v. Major League Soccer, L.L.C. , 284 F.3d 47 , 62 (1st Cir. 2002) (citing **Davis v. Rennie, 264 F.3d 86, 100-01(1st Cir. 2001),** cert. denied , 537 U.S. 885 , 154 L. Ed. 2d 144 , 123 S. Ct. 118 ... |
|  | **Discussion:**  | **Court:** 1st Cir. P.R. | **Date:** Dec. 5, 2003 | **Headnotes:**: HN11, HN36 |
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| 18. | [**Acevedo-Garcia v. Vera Monroig**](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:49BS-3YP0-0038-X51X-00000-00), 2003 U.S. App. LEXIS 17168, 56 Fed. R. Serv. 3d (Callaghan) 971  |
|  |  **Cited by:** ... . Our previous cases reflect a marked reluctance to find plain error in civil cases: "Especially in a civil case this is a very hard test to meet because over and above plain error, it requires a showing both of prejudice and a miscarriage of justice or something of this magnitude." Fraser v. Major League Soccer, L.L.C. , 284 F.3d 47 , 62 (1st Cir. 2002) (citing **Davis v. Rennie, 264 F.3d 86, 100-01(1st Cir. 2001)** , cert. denied , 537 U.S. 885 , 154 L. Ed. 2d 144 , 123 S. Ct. 118 ... |
|  | **Discussion:**  | **Court:** 1st Cir. P.R. | **Date:** Aug. 21, 2003 | **Headnotes:**: HN11, HN36 |
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| 19. | [**Primus v. Galgano**](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:48N5-PK60-0038-X436-00000-00), 329 F.3d 236, 2003 U.S. App. LEXIS 9803  |
|  |  **Cited by:** 329 F.3d 236 p.245... Perez v. Volvo Car Corp. , 247 F.3d 303 , 318-19 **(1st Cir. 2001)** (review of denial of Rule 59(e) motion for altering or amending judgment typically under abuse of discretion, but errors of law subject to de novo review), with **Davis v. Rennie, 264 F.3d 86, 100(1st Cir. 2001)** (plain error review for limited exceptions when appellant fails to adhere to Rule 51 's demand that objections to jury instructions be made before the jury retires). Whatever the appropriate characterization ... |
|  | **Discussion:**  | **Court:** 1st Cir. Mass. | **Date:** May 21, 2003 | **Headnotes:**: HN36 |
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| 20. | [**Jarrett v. Town of Yarmouth**](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:48J5-7250-0038-X2N4-00000-00), 331 F.3d 140, 2003 U.S. App. LEXIS 8606  |
|  |  **Cited by:** 331 F.3d 140 p.146... general guidance to courts reviewing qualified immunity determinations: A court required to rule upon the qualified immunity issue must consider this threshold question: Taken in the light most favorable to the party asserting the injury, do the facts alleged show the officer's conduct violated a constitutional right? This must be the initial inquiry. "A district court's denial of qualified immunity is a legal question that we review de novo." **Davis v. Rennie, 264 F.3d 86, 113(1st Cir. 2001)** ... |
|  | **Discussion:**  | **Court:** 1st Cir. Mass. | **Date:** May 6, 2003 | **Headnotes:**: HN26 |
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| 21. | [**Jarrett v. Town of Yarmouth**](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:472T-SD60-0038-X357-00000-00), 309 F.3d 54, 2002 U.S. App. LEXIS 22354  |
|  |  **Cited by:** 309 F.3d 54 p.61... While courts normally determine whether qualified immunity is available prior to trial, there are cases where a jury needs to resolve crucial factual questions before a court can resolve the qualified immunity question. Whether an officer is entitled to qualified immunity is a question of law, to be determined by the courts. Starlight Sugar, Inc. v. Soto , 253 F.3d 137 , 141 **(1st Cir. 2001)** . We therefore review the question de novo . **Davis v. Rennie, 264 F.3d 86, 113(1st Cir. 2001)** ... |
|  | **Discussion:**  | **Court:** 1st Cir. Mass. | **Date:** Oct. 25, 2002 | **Headnotes:**: HN26 |
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| 22. | [**Chestnut v. City of Lowell**](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:46TB-T040-0038-X51K-00000-00), 305 F.3d 18, 2002 U.S. App. LEXIS 19625, 147 Lab. Cas. (CCH) P59650  |
|  |  **Cited in Dissenting Opinion at:** 305 F.3d 18 p.25 **Cited by:** 305 F.3d 18 p.20... a "miscarriage of justice." Until today, we have reserved that label for "extraordinary" cases. Teamsters, Local No. 59 v. Superline Transp. Co. , 953 F.2d 17 , 21 (1st Cir. 1992) . Indeed, it appears that we have never before found a miscarriage of justice in a civil case involving faulty jury instructions. See **Davis v. Rennie, 264 F.3d 86, 100-01(1st Cir. 2001)** . The circumstances of this case give us no reason to depart from that settled practice. Therefore, I respectfully dissent. ... |
|  | **Discussion:**  | **Court:** 1st Cir. Mass. | **Date:** Sept. 20, 2002 | **Headnotes:**: HN21 |
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| 23. | [**Howard v. Antilla**](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:465F-9MS0-0038-X2FF-00000-00), 294 F.3d 244, 2002 U.S. App. LEXIS 12851, 30 Media L. Rep. (BNA) 1936  |
|  |  **Cited by:** 294 F.3d 244 p.251... , we find that the circumstances presented by this case are a far cry from satisfying that miserly standard. See Merchant , 740 F.2d at 89-90 (reasoning that "a number considerations" point to some tolerance of inconsistency in civil verdicts); cf. **Davis v. Rennie, 264 F.3d 86, 100-01(1st Cir. 2001)** (noting that no known decision of this circuit has found plain error in a civil case). See Maher v. Hyde , 272 F.3d 83 , 86 **(1st Cir. 2001)** ("Federal courts do not issue advisory ... |
|  | **Discussion:**  | **Court:** 1st Cir. N.H. | **Date:** June 28, 2002 | **Headnotes:**: HN36 |
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| 24. | [**Wilson v. Town of Mendon**](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4632-MY70-0038-X166-00000-00), 294 F.3d 1, 2002 U.S. App. LEXIS 11810  |
|  |  **Cited by:** 294 F.3d 1 p.14... It is settled in this Circuit that an officer may be liable for failing to intervene in appropriate circumstances to protect a detainee from the excessive use of force by a fellow officer. Gadreault , 923 F.2d at 207 n.3 . However, in Gadreault , this Court found no liability where an attack "was over in a matter of seconds," because the defendant officers "did not have a realistic opportunity to intercede." **Davis v. Rennie, 264 F.3d 86, 98n.10 (1st Cir. 2001)** (discussing Gadreault ... |
|  | **Discussion:**  | **Court:** 1st Cir. Mass. | **Date:** June 17, 2002 | **Headnotes:**: HN31 |
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| 25. | [**Gray v. Genlyte Group, Inc.**](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:45M9-CC80-0038-X03G-00000-00), 289 F.3d 128, 2002 U.S. App. LEXIS 7134, 83 Empl. Prac. Dec. (CCH) P41169, 88 Fair Empl. Prac. Cas. (BNA) 1055, 59 Fed. R. Evid. Serv. (CBC) 187  |
|  |  **Cited by:** 289 F.3d 128 p.134... after the instructions are given but before the jury retires for deliberations. Smith v. Mass. Inst. Tech. , 877 F.2d 1106 , 1109 (1st Cir. 1989) . Further, it is not enough for counsel in renewing an objection merely to refer back generically to objections made before the charge. 1 See **Davis v. Rennie, 264 F.3d 86, 100(1st Cir. 2001)** ; Elliot v. S.D. Warren Co. , 134 F.3d 1 , 5-6 (1st Cir. 1998) ; see also 9A Wright and Miller, Federal Practice and Procedure § 2553 at 411-415 ... |
|  | **Discussion:**  | **Court:** 1st Cir. Mass. | **Date:** Apr. 18, 2002 | **Headnotes:**: HN9 |
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| 26. | [**Chestnut v. City of Lowell**](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:45G1-YS00-0038-X2NC-00000-00), 2002 U.S. App. LEXIS 5295  |
|  |  **Cited by:** ... Instead, the district court uses waiver to refer to the failure to make a timely objection, leaving only plain error review. Although we are moving away from that usage of the word "waiver" in favor of the Olano usage (the relinquishment of a known right, precluding review), our steps have been uncertain. See , e.g. , **Davis v. Rennie, 264 F.3d 86, 100-01(1st Cir. 2001)** (indicating that party's failure to object to omission of "deliberate indifference" instruction at post-charge conference ... |
|  | **Discussion:**  | **Court:** 1st Cir. Mass. | **Date:** Mar. 29, 2002 | **Headnotes:**: HN10, HN38 |
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| 27. | [**Fraser v. Major League Soccer, L.L.C.**](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:45D4-7520-0038-X1J2-00000-00), 284 F.3d 47, 2002 U.S. App. LEXIS 4400, 59 Fed. R. Serv. 3d (Callaghan) 418, 2002-1 Trade Cas. (CCH) P73620, 59 Fed. R. Evid. Serv. (CBC) 418  |
|  |  **Cited by:** 284 F.3d 47 p.62... Unfortunately, plaintiffs' counsel did not spell out the last quoted objection at the post-charge conference. To refer only to "other factors" obviously does not tell the judge just what previously requested instruction has been omitted or identify the factors claimed to be insufficiently stressed. **Davis v. Rennie, 264 F.3d 86, 100(1st Cir. 2001)** . Accordingly, the failure to give the two instructions in question is reviewed only for "plain error"; especially Regulated Practices, Market ... |
|  | **Discussion:**  | **Court:** 1st Cir. Mass. | **Date:** Mar. 20, 2002 | **Headnotes:**: HN36 |
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| 28. | [**Wilson v. Town of Mendon**](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:45CX-7TR0-0038-X1GG-00000-00), 2002 U.S. App. LEXIS 4352  |
|  |  **Cited by:** ... It is settled in this Circuit that an officer may be liable for failing to intervene in appropriate circumstances to protect a detainee from an excessive use of force by his fellow officers. Gadreault , 923 F.2d at 207 n.3 . However, in Gadreault , this Court found no liability where an attack "was over in a matter of seconds," because the defendant officers "did not have a realistic opportunity to intercede." **Davis v. Rennie, 264 F.3d 86, 98n.10 (1st Cir. 2001)** (discussing Gadreault ... |
|  | **Discussion:**  | **Court:** 1st Cir. Mass. | **Date:** Mar. 19, 2002 | **Headnotes:**: HN5 |
| **1st Circuit - U.S. District Courts** |
| 29. | [**Correia v. Town of Westport**](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5PDX-V361-F04D-D09S-00000-00), 2017 U.S. Dist. LEXIS 144591  |
|  |  **Cited by:** ... for failing to intervene during the alleged use of excessive force on Mr. Correia. Compl. ¶ 53. "An officer who is present at the scene and who fails to take reasonable steps to protect the victim of another officer's use of excessive force can be held liable under section 1983 for his nonfeasance." **Davis v. Rennie, 264 F.3d 86, 102(1st Cir. 2001)** (quoting Gaudreault v. Municipality of Salem, Mass. , 923 F.2d 203 , 207 (1st Cir. 1990) (per curiam)). To prevail on a § 1983 claim ... |
|  | **Court:** D. Mass. | **Date:** Sept. 7, 2017 |
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| 30. | [**Echavarria v. Roach**](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5PDX-V361-F04D-D09P-00000-00), 2017 U.S. Dist. LEXIS 144589  |
|  |  **Cited by:** ... ("An officer may be held liable not only for his personal use of excessive force, but also for his failure to intervene in appropriate circumstances to protect an arrestee from the excessive use of force by his fellow officers."); **Davis v. Rennie, 264 F.3d 86, 98(1st Cir. 2001)** (recognizing as "good law in our circuit" the proposition that " [a]n officer who is present at the scene and who fails to take reasonable steps to protect the victim of another officer's use of excessive force ... |
|  | **Court:** D. Mass. | **Date:** Sept. 7, 2017 |
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| 31. | [**Begin v. Drouin**](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5NC3-1SG1-F04D-G07S-00000-00), 2017 U.S. Dist. LEXIS 60160  |
|  |  **Cited by:** ... 547 F.3d at 11 . 13 First Circuit precedent also instructs that excessive force claims involving persons with mental illness generally follow the same analysis as claims involving suspects apprehended for criminal conduct. See, e.g. , **Davis v. Rennie, 264 F.3d 86, 111(1st Cir. 2001)** (" [T]he state's duty to protect those it confines because of mental illness requires that force be used as sparingly as possible."). Depending on its assessment of the circumstances, a finder of fact could ... |
|  | **Court:** Dist. Maine | **Date:** Apr. 20, 2017 | **Headnotes:**: HN4 |
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| 32. | [**Humphrey v. Comoletti**](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5N7J-TVK1-F04D-D0NV-00000-00), 2017 U.S. Dist. LEXIS 50465  |
|  |  **Cited by:** ... in connection with the use of excessive force if he failed to intervene, which requires showing that the defendant "1) was present when excessive force was used, 2) observed the use of excessive force, 3) was in a position to realistically prevent that force and 4) had sufficient time to do so." Walker v. Jackson , 56 F. Supp. 3d 89 , 96 (D. Mass. 2014) (citing **Davis v. Rennie, 264 F.3d 86, 102(1st Cir. 2001))** . Finally, "[a] police officer who fails to provide adequate medical treatment ... |
|  | **Discussion:**  | **Court:** D. Mass. | **Date:** Mar. 31, 2017 | **Headnotes:**: HN30, HN31 |
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| 33. | [**Staples v. NH State Prison**](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5N4K-4JV1-F04D-V025-00000-00), 2017 DNH 46, 2017 U.S. Dist. LEXIS 39615  |
|  |  **Cited by:** ... Cole v. Thyng, No. 11-cv-018-JL, 2011 U.S. Dist. LEXIS 139159 , 2011 WL 6020804 , at \* 1 (D.N.H. Nov. 8, 2011) , report and recommendation adopted , No. 11-CV-18-JL, 2011 U.S. Dist. LEXIS 139099 , 2011 WL 6018272 (D.N.H. Dec. 2, 2011) ; see also **Davis v. Rennie,264 F.3d 86, 98n.9 (1st Cir. 2001)** (noting that a "convicted prisoner may bring a claim for use of excessive force under the Eighth Amendment "). Thus, Staples fails to state a substantive due process claim. Relatedly, ... |
|  | **Discussion:**  | **Court:** D.N.H. | **Date:** Mar. 17, 2017 | **Headnotes:**: HN7 |
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| 34. | [**Doiron v. Edmark**](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5MDH-Y6X1-F04D-V01X-00000-00), 2016 U.S. Dist. LEXIS 174287  |
|  |  **Cited by:** ... minimis uses of physical force, provided that the use of force is not of a sort repugnant to the conscience of mankind," do not violate the Eighth Amendment . Id. at 9-10 (internal quotation marks and citations omitted). Further, an officer has a duty to intervene to protect an inmate when he sees another officer using excessive force against a prisoner. See **Davis v. Rennie, 264 F.3d 86, 113-114(1st Cir. 2001)** . The duty to intervene is triggered "only when an officer has 'a realistic ... |
|  | **Discussion:**  | **Court:** D.N.H. | **Date:** Oct. 26, 2016 | **Headnotes:**: HN7, HN30, HN31 |
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| 35. | [**Holloman v. Clarke**](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5KSD-81G1-F04D-D1DM-00000-00), 208 F. Supp. 3d 373, 2016 U.S. Dist. LEXIS 129734  |
|  |  **Cited by:** 208 F. Supp. 3d 373 p.376... constitutional rights. Second, cases before 2012, when the conduct here allegedly occurred, clearly establish that an officer has a duty to intervene when another officer uses excessive force against a pretrial detainee. See **Davisv.Rennie, 264 F.3d 86, 113-14(1st Cir. 2001)** . Even though the Supreme Court held in 2015 that the Fourteenth Amendment objective standard applies to pretrial detainees in excessive force cases, both the Fourteenth Amendment and the standard for failure ... |
|  | **Discussion:**  | **Court:** D. Mass. | **Date:** Sept. 22, 2016 | **Headnotes:**: HN5, HN12, HN30 |
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| 36. | [**Doyle v. Town of Scarborough**](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5KPC-DJ81-F04D-G0MJ-00000-00), 2016 U.S. Dist. LEXIS 123739  |
|  |  **Distinguished by:** Although the First Circuit has recognized that an individual may be liable in certain limited circumstances for a failure to intervene and stop potential civil rights violations by other individuals, those circumstances are not present here. For example, the First Circuit has imposed liability on individuals under § 1983 based on a failure to intervene theory in the context of excessive force claims against police officers and mental hospital staff. See e.g., Torres-Rivera v. O'Neill-Cancel, 406 F.3d 43, 52 (1st Cir. 2005) ("[A]n officer who is present at the scene and fails to take reasonable steps to protect the victim of another officer's excessive force can be held liable under section 1983 for his nonfeasance") (citing Gaudreault v. Municipality of Salem, 923 F.2d 203, 207 n.3 (1st Cir. 1990)); Davis v. Rennie, 264 F.3d 86, 114 (1st Cir. 2001) (holding that a nurse at the state mental hospital had a duty to intervene and stop her supervisee's use of excessive force). The First Circuit reasoned that because police officers and the staff at a state mental hospital have a legal, affirmative duty to protect individuals in their custody, they may be liable for nonfeasance when they do not intervene to stop the use of excessive force by a fellow officer or supervisee.  **(HN31)** |
|  | **Discussion:**  | **Court:** Dist. Maine | **Date:** Sept. 13, 2016 | **Headnotes:**: HN31 |
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| 37. | [**Ramos-Torres v. Municipality of Caguas**](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5K5G-1D31-F04F-5082-00000-00), 2016 U.S. Dist. LEXIS 87681  |
|  |  **Cited by:** ... 923 F.2d at 207 n.3 (agreeing with other decisions holding that officers present at the scene who fail to take reasonable steps to protect the victim from another officer's excessive force can be held liable under Section 1983 ); see also **Davis v. Rennie, 264 F.3d 86, 114(1st Cir. 2001)** (stating that "[a] police officer has a duty to intervene in cases in which a fellow officer uses excessive force because his office carries with it an affirmative duty to act"). Thus, Agent Rodriguez ... |
|  | **Court:** Dist.P.R. | **Date:** July 5, 2016 | **Headnotes:**: HN31 |
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| 38. | [**Perry v. Roy**](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5JP4-NM01-F04D-D20H-00000-00), 2016 U.S. Dist. LEXIS 58703  |
|  |  **Followed by:** This factor "directs a reviewing court to assess the punitive damage award in light of the complex of statutory schemes developed to respond to the same sort of underlying conduct." Zimmerman v. Direct Fed. Credit Union, 262 F.3d 70, 82 (1st Cir. 2001). In § 1983 cases, courts must consider whether awards approved in other cases gave the defendants "fair notice" as to their potential liability.  ... Davis v. Rennie, 264 F.3d 86, 118 (1st Cir. 2001). **(HN34)** |
|  | **Discussion:**  | **Court:** D. Mass. | **Date:** May 4, 2016 | **Headnotes:**: HN34 |
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| 39. | [**Giorgio v. Duxbury**](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5JDF-GWM1-F04D-D1JW-00000-00), 2016 U.S. Dist. LEXIS 40579  |
|  |  **Cited by:** ... A review of a post-trial qualified immunity ruling, requires that evidence pertaining to factual findings, must be construed in the light most hospitable to the party that prevailed at trial. A review of a post-trial qualified immunity ruling, requires that "evidence pertaining to factual findings, must be construed in the light most hospitable to the party that prevailed at trial." **Davis v. Rennie, 264 F.3d 86, 113(1st Cir. 2001)** (internal citations and quotation marks omitted). Viewed ... |
|  | **Court:** D. Mass. | **Date:** Mar. 25, 2016 | **Headnotes:**: HN26 |
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| 40. | [**Manchester v. City of Amesbury**](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5H23-4CK1-F04D-D03T-00000-00), 138 F. Supp. 3d 54, 2015 U.S. Dist. LEXIS 133046  |
|  |  **Cited by:** 138 F. Supp. 3d 54 p.66... (1st Cir. 2012) (quoting Santiago v. Puerto Rico , 655 F.3d 61 , 68 (1st Cir. 2011)) . Section 1983 "'is not itself a source of substantive rights, but merely provides a method for vindicating federal rights elsewhere conferred.'" **Davis v. Rennie, 264 F.3d 86, 97(1st Cir. 2001)** (quoting Graham v. Connor , 490 U.S. 386 , 393-94 , 109 S. Ct. 1865 , 104 L. Ed. 2d 443 (1989)) . 1. Counts I and II . In Count I of the complaint, Manchester charges that Defendants "individually and ... |
|  | **Discussion:**  | **Court:** D. Mass. | **Date:** Sept. 30, 2015 | **Headnotes:**: HN2 |
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| 41. | [**Lu v. Hulme**](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5H0K-7CP1-F04D-D07P-00000-00), 133 F. Supp. 3d 312, 2015 U.S. Dist. LEXIS 127669  |
|  |  **Followed by:** 133 F. Supp. 3d 312 p.333"To prevail under the Massachusetts Civil Rights Act (MCRA), plaintiffs must prove that '(1) their exercise or enjoyment of rights secured by the United States or the Commonwealth of Massachusetts (2) has been interfered with, or attempted to be interfered with, and (3) that the interference or attempted interference was by threats, intimidation or coercion.'" Davis v. Rennie, 264 F.3d 86, 111 (1st Cir. 2001) (quoting Swanset Dev. Corp. v. City of Taunton,423 Mass. 390, 395, 668 N.E. 2d 333 (1996)). "[T]he MCRA contemplates a two-part sequence: (1) the defendant threatens, intimidates or coerces the plaintiff in order to (2) cause the plaintiff to give up something that the plaintiff has the constitutional right to do. Thus, for example, the statute would apply where a defendant (1) threatened to beat up the plaintiff if (2) the plaintiff exercised the right to vote." Goddard, 629 F. Supp. 2d at 128. **(HN23)** |
|  | **Discussion:**  | **Court:** D. Mass. | **Date:** Sept. 22, 2015 | **Headnotes:**: HN23 |
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| 42. | [**Drexler v. TEL NEXX, Inc.**](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5GT2-4PC1-F04D-D002-00000-00), 125 F. Supp. 3d 361, 2015 U.S. Dist. LEXIS 114697, 25 Wage & Hour Cas. 2d (BNA) 907  |
|  |  **Followed by:** 125 F. Supp. 3d 361 p.377Nor can Mr. Drexler bootstrap this claim into a violation of the MCRA. To prevail under the MCRA, a plaintiff must prove that "(1) their exercise or enjoyment of rights secured by the Constitution or laws of either the United States or of the Commonwealth, (2) have been interfered with, or attempted to be interfered with, and (3) that the interference or attempted interference was by 'threats, intimidation, or coercion.'" Davis v. Rennie, 264 F.3d 86, 111 (1st Cir. 2001) (quoting Swanset Dev. Corp. v. City of Taunton, 423 Mass. 390, 668 N.E.2d 333, 337 (Mass. 1996)). **(HN23)** |
|  | **Discussion:**  | **Court:** D. Mass. | **Date:** Aug. 28, 2015 | **Headnotes:**: HN23 |
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| 43. | [**Wilborn v. Wall**](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5H11-3FW1-F04D-D0BC-00000-00), 2015 U.S. Dist. LEXIS 129305  |
|  |  **Cited by:** ... 68 (1st Cir. 2011)) ; accord Goldstein v. Galvin , 719 F.3d 16 , 24 (1st Cir. 2013) . Section 1983 "'is not itself a source of substantive rights, but merely provides a method for vindicating federal rights elsewhere conferred.'" **Davis v. Rennie, 264 F.3d 86, 97(1st Cir. 2001)** (quoting Graham v. Connor , 490 U.S. 386 , 393-94 , 109 S. Ct. 1865 , 104 L. Ed. 2d 443 (1989)) . In this case, the parties do not dispute that Defendants were acting under color of state law. Plaintiff ... |
|  | **Discussion:**  | **Court:** D. Mass. | **Date:** July 8, 2015 | **Headnotes:**: HN2, HN23, HN25 |
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| 44. | [**Amato v. Barone**](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5G47-YG01-F04D-D11R-00000-00), 2015 U.S. Dist. LEXIS 70376  |
|  |  **Cited by:** ... placed under arrest coerced him into an "unclothed, public march." Put otherwise, Amato alleges that Defendants interfered with his right to privacy through coercion. A jury could reasonably find on the evidence presented—namely, that Officer Barone and Sergeant Steele refused Amato's request to clothe himself, despite a lack of plausible safety concerns—that the officers' actions were intended to interfere with Amato's right to privacy. See **Davis v. Rennie, 264 F.3d 86, 112(1st Cir. 2001)** ... |
|  | **Discussion:**  | **Court:** D. Mass. | **Date:** June 1, 2015 | **Headnotes:**: HN23 |
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| 45. | [**Nascarella v. Cousins**](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5FM6-K721-F04D-D01F-00000-00), 2015 U.S. Dist. LEXIS 39459  |
|  |  **Cited by:** ... "A direct violation of a person's rights does not by itself involve threats, intimidation, or coercion and thus does not implicate the Act." Longval v. Comm'r of Correction , 404 Mass. 325 , 535 N.E.2d 588 , 593 (Mass. 1989) ; cf. **Davis v. Rennie, 264 F.3d 86, 112(1st Cir. 2001)** (finding that holding inmate down so another officer could strike him could be a coercive act depriving inmate of his Eighth Amendment rights); Walker v. Jackson , No. 12-10267, 56 F. Supp. 3d 89 , 2014 ... |
|  | **Discussion:**  | **Court:** D. Mass. | **Date:** Mar. 27, 2015 | **Headnotes:**: HN7 |
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| 46. | [**Walker v. Jackson**](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5DGV-B1C1-F04D-D0WK-00000-00), 56 F. Supp. 3d 89, 2014 U.S. Dist. LEXIS 154747  |
|  |  **Followed by:** 56 F. Supp. 3d 89 p.96[a]n officer who is present at the scene and who fails to take reasonable steps to protect the victim of another officer's use of excessive force can be held liable under section 1983 for his nonfeasance. ... Davis v. Rennie, 264 F.3d 86, 98 (1st Cir. 2001) (quoting Gaudreault v. Municipality of Salem, Mass., 923 F.2d 203, n.3 (1st Cir. 1990). A non-participating defendant can only be found liable pursuant to 42 U.S.C. § 1983 if he 1) was present when excessive force was used, 2) observed the use of excessive force, 3) was in a position to realistically prevent that force and 4) had sufficient time to do so. Id. at 102. **(HN30)** |
|  | **Discussion:**  | **Court:** D. Mass. | **Date:** Oct. 31, 2014 | **Headnotes:**: HN30, HN31 |
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| 47. | [**Day v. Hurley**](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5C4W-DH51-F04D-V002-00000-00), 2014 DNH 99, 2014 U.S. Dist. LEXIS 62451  |
|  |  **Distinguished by:** Davis and Gaudreault were both excessive-force cases, not unlawful-detention cases, and it is not clear that the rule from those cases extends to claims for unlawful detention. There is yet another problem with Day's reliance on Davis. That case involved a claim based upon substantive due process, see 264 F.3d at 97-98 ("[t]he strand of substantive due process jurisprudence primarily at issue here involves Davis's right to be free from the use of excessive force and the appellants' failure to prevent that force"), and the court of appeals has characterized Gaudreault as a due-process case, see Martinez v. Colon, 54 F.3d 980, 985 (1st Cir. 1995).  **(HN3)** |
|  | **Discussion:**  | **Court:** D.N.H. | **Date:** May 6, 2014 | **Headnotes:**: HN3, HN12, HN18, HN30 |
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| 48. | [**Cassie M. v. Chafee**](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5C3G-GK81-F04F-6001-00000-00), 16 F. Supp. 3d 33, 2014 U.S. Dist. LEXIS 59714  |
|  |  **Explained by:** 16 F. Supp. 3d 33 p.43... S.Ct. at 2462-63 ); Battista v. Clarke , 645 F.3d 449 , 453 (1st Cir. 2011) (in case of civilly committed plaintiff, application of Youngberg standard, defined as "whether the defendant failed to exercise a reasonable professional judgment"); **Davis v. Rennie, 264 F.3d 86, 98** (affirming trial court's refusal to apply "shock the conscience" standard to § 1983 claims brought by involuntary committed mental patient against mental health personnel). It is noted that in **Davis v. Rennie** ... |
|  | **Discussion:**  | **Court:** Dist.R.I. | **Date:** 2014 | **Headnotes:**: HN4, HN6 |
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| 49. | [**Stark v. Hartt Transp. Sys.**](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5CWS-TST1-F04D-G009-00000-00), 37 F. Supp. 3d 445, 2014 U.S. Dist. LEXIS 111384  |
|  |  **Cited by:** 37 F. Supp. 3d 445 p.494... an employee can demonstrate that an employer discriminated in the face of a perceived risk that its actions would violate federal law "by showing that the defendant's employees lied, either to the plaintiff or to the jury, in order to cover up their discriminatory actions[,]" Bruso v. United Airlines, Inc ., 239 F.3d 848 , 858 (7th Cir. 2001) ; see also, e.g., **Davis v. Rennie, 264 F.3d 86, 115(1st Cir. 2001)** (rebuffing challenge to award of punitive damages, in part, because defendants ... |
|  | **Discussion:**  | **Court:** Dist. Maine | **Date:** Mar. 31, 2014 | **Headnotes:**: HN35 |
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| 50. | [**Widi v. McNeil**](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:59F3-W321-F04D-G03C-00000-00), 2013 U.S. Dist. LEXIS 136464  |
|  |  **Cited by:** ... . Count III claims that Agent McNeil was working on the same investigation as Officer Brown when Officer Brown put handcuffs on Mr. Widi, and that Agent McNeil refused to loosen Officer Brown's handcuffs. The Court acknowledges that " [a]n officer who is present at the scene and who fails to take reasonable steps to protect the victim of another officer's use of force can be held liable under section 1983 for his nonfeasance." **Davis v. Rennie, 264 F.3d 86, 98(1st Cir. 2001)** . But nowhere ... |
|  | **Discussion:**  | **Court:** Dist. Maine | **Date:** Sept. 24, 2013 | **Headnotes:**: HN31 |
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| 51. | [**Walker v. Jackson**](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:58VS-XF51-F04D-D04W-00000-00), 952 F. Supp. 2d 343, 2013 U.S. Dist. LEXIS 95938  |
|  |  **Cited by:** 952 F. Supp. 2d 343 p.352... But the court has not found any cases holding officers liable in analogous circumstances. Indeed, the cases within the First Circuit deal almost exclusively with the failure to intervene in the use of excessive force. 40 See Wilson v. Town of Mendon , 294 F.3d 1 , 6 (1st Cir. 2002) (failure to intervene in use of excessive force); **Davis v. Rennie, 264 F.3d 86, 98(1st Cir. 2001)** (same); Martinez v. Colon , 54 F.3d 980 , 985 (1st Cir. 1995) (same); Gaudreault v. Municipality of ... |
|  | **Discussion:**  | **Court:** D. Mass. | **Date:** July 8, 2013 | **Headnotes:**: HN12, HN26, HN31 |
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| 52. | [**Bliss v. Sanguinet**](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:58RH-2251-F04D-D00Y-00000-00), 2013 U.S. Dist. LEXIS 88245  |
|  |  **Followed by:** 'Intimidation' involves putting in fear for the purpose of compelling or deterring conduct . . .  ... [C]oercion . . . [is] 'the application to another of such force, either physical or moral as to constrain him to do something against his will something he would not otherwise have done.'" Davis v. Rennie, 264 F.3d 86, 111 (1st Cir. 2001) (quoting Planned Parenthood of Mass., Inc. v. Blake, 417 Mass. 467, 631 N.E.2d 985, 990 (Mass. 1994)).  **(HN24)** |
|  | **Discussion:**  | **Court:** D. Mass. | **Date:** June 24, 2013 | **Headnotes:**: HN24 |
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| 53. | [**Lu v. Hulme**](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:583K-FSW1-F04D-D0WB-00000-00), 2013 U.S. Dist. LEXIS 46888  |
|  |  **Cited by:** ... With regard to the MCRA, Lu has stated a plausible damage claim for which relief can be granted. The MCRA prohibits among other things, an interference with any federal right by "threats, intimidation, or coercion." M.G.L. c. 12, §11I ; see also **Davis v. Rennie, 264 F.3d 86, 111(1st Cir. 2001)** . As explained earlier, Lu's First Amendment right to access to the Library is at the heart of this case. Lu alleges that Hulme told him that neither he nor any other homeless person could "come ... |
|  | **Discussion:**  | **Court:** D. Mass. | **Date:** Mar. 30, 2013 | **Headnotes:**: HN2 |
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| 54. | [**Ramos v. White**](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:57G7-68G1-F04D-D389-00000-00), 2013 U.S. Dist. LEXIS 4048  |
|  |  **Distinguished by:** This case therefore differs distinctly from Davis v. Rennie, 264 F.3d 86, 111-12 (1st Cir. 2001). In that case, certain defendants held the plaintiff down while another defendant beat him around the head. It was clear in that case that the defendants holding the plaintiff down knew their actions would allow the beating to continue. Here, by contrast, there is no evidence Brooks knew his actions would allow White to shoot Ramos. |
|  | **Discussion:**  | **Court:** D. Mass. | **Date:** Jan. 10, 2013 |
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| 55. | [**Rogers v. Cofield**](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5782-1D41-F04D-D31F-00000-00), 908 F. Supp. 2d 277, 2012 U.S. Dist. LEXIS 175921  |
|  |  **Cited by:** 908 F. Supp. 2d 277 p.286... The jury heard ample evidence regarding both claims. If there were no other verdicts to elucidate what the jury found or if there was an inconsistency with an objection, a new trial might be warranted. See Gillespie v. Sears, Roebuck & Co. , 386 F.3d 21 , 30-31 (1st Cir. 2004) ; **Davis v. Rennie, 264 F.3d 86, 105-107(1st Cir. 2001)** . In particular, the difference between the elements of the excessive force claim and the defendant favorable battery verdict is that the defendant favorable ... |
|  | **Discussion:**  | **Court:** D. Mass. | **Date:** Dec. 12, 2012 |
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| 56. | [**Ramos v. White**](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:56YH-58P1-F04D-D2N2-00000-00), 2012 U.S. Dist. LEXIS 157495  |
|  |  **Cited by:** ... rights. Even if Brooks was unaware that White intended to shoot Ramos, the MCRA does not require a specific intent to violate a person's rights; it is enough that Brooks assisted someone else whose intentional actions violated Ramos's rights. Redgrave , 502 N.E.2d at 1378-79 ; cf. **Davis v. Rennie, 264 F.3d 86, 111-12(1st Cir. 2001)** (upholding jury verdict finding MCRA violation by mental health facility employees who held patient down while another employee violated patient's rights ... |
|  | **Discussion:**  | **Court:** D. Mass. | **Date:** Nov. 2, 2012 | **Headnotes:**: HN12 |
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| 57. | [**Anthony v. Dionne**](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:56JD-R191-F04D-V0W6-00000-00), 2012 U.S. Dist. LEXIS 130106  |
|  |  **Cited by:** ... Anthony asserts that as Rodrigues's supervising officer, Balles, had a duty to intervene on Anthony's behalf as soon as Rodrigues lifted Anthony by his wrists. "[A] police officer has a duty to act when he sees another officer using excessive force against an arrestee or pretrial detainee if the officer could realistically prevent that force and had sufficient time to do so." **Davis v. Rennie, 264 F.3d 86, 113(1st Cir. 2001)** . The First Circuit has suggested that this principle applies with ... |
|  | **Discussion:**  | **Court:** D.N.H. | **Date:** Sept. 10, 2012 | **Headnotes:**: HN30, HN31 |
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| 58. | [**Santiago v. Keyes**](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:56D1-H9J1-F04D-D1K9-00000-00), 890 F. Supp. 2d 149, 2012 U.S. Dist. LEXIS 117704  |
|  |  **Cited by:** 890 F. Supp. 2d 149 p.158... And, at least in the context of excessive force, the First Circuit has found that " [a]n officer who is present at the scene and who fails to take reasonable steps to protect the victim of another officer's use of excessive force can be held liable under section 1983 for his nonfeasance." **Davis v. Rennie264 F.3d 86, 98(1st Cir. 2001)** . Although not addressed in any detail by either party, the appropriate standard to apply to Rivera's inaction appears to be somewhat of an open question ... |
|  | **Discussion:**  | **Court:** D. Mass. | **Date:** Aug. 21, 2012 | **Headnotes:**: HN30, HN31 |
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| 59. | [**Fontanez v. City of Worcester**](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:58W1-89B1-F04D-D058-00000-00), 2012 U.S. Dist. LEXIS 188626  |
|  |  **Distinguished by:** Rather, the search and seizure itself is the alleged constitutional violation. That violation cannot satisfy both the "threats, intimidation or coercion" and "violation" elements of an MCRA claim. See Gallagher v. Commonwealth of Mass., 2002 U.S. Dist. LEXIS 8171, 2002 WL 924243, at \*1 (D. Mass. Mar. 11, 2002) (holding that no violation of the MCRA exists where excessive force against a prisoner was not used in furtherance of violating some additional right); cf. Davis v. Rennie, 264 F.3d 86, 112 (1st Cir. 2001) (holding that one officer's physical restraint of the plaintiff and another's use of unreasonable force satisfied the "coercion" and "interference with the enjoyment of rights" elements, respectively).  **(HN12)** |
|  | **Discussion:**  | **Court:** D. Mass. | **Date:** July 9, 2012 | **Headnotes:**: HN12 |
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| 60. | [**Fontanez v. City of Worcester**](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5615-TCS1-F04D-D0V6-00000-00), 2012 U.S. Dist. LEXIS 90388  |
|  |  **Followed by:** Rather, the search and seizure itself is the alleged constitutional violation. That violation cannot satisfy both the "threats, intimidation or coercion" and "violation" elements of an MCRA claim. See Gallagher v. Commonwealth of Mass., 2002 U.S. Dist. LEXIS 8171, 2002 WL 924243, at \*1 (D. Mass. Mar. 11, 2002) (holding that no violation of the MCRA exists where excessive force against a prisoner was not used in furtherance of violating some additional right); cf. Davis v. Rennie, 264 F.3d 86, 112 (1st Cir. 2001) (holding that one officer's physical restraint of the plaintiff and another's use of unreasonable force satisfied the "coercion" and "interference with the enjoyment of rights" elements, respectively).  **(HN12)** |
|  | **Discussion:**  | **Court:** D. Mass. | **Date:** June 29, 2012 | **Headnotes:**: HN12 |
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| 61. | [**Inman v. Siciliano**](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:55SJ-V5N1-F04D-D0G8-00000-00), 2012 U.S. Dist. LEXIS 75285  |
|  |  **Cited by:** ... 2002 U.S. Dist. LEXIS 8171 , 2002 WL 924243 , at \* 1 (D. Mass. Mar. 11, 2002) (holding that no violation of the MCRA exists where excessive force against a prisoner was not used in furtherance of violating some additional right). Cf. **Davis v. Rennie, 264 F.3d 86, 112(1st Cir. 2001)** (holding that one officer's physical restraint of the plaintiff and another's use of unreasonable force satisfied the "coercion" and "interference with the enjoyment of rights" elements, respectively). Because ... |
|  | **Discussion:**  | **Court:** D. Mass. | **Date:** May 31, 2012 | **Headnotes:**: HN31 |
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| 62. | [**Commey v. United States**](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:55PF-0YJ1-F04D-D0CX-00000-00), 2012 U.S. Dist. LEXIS 70425  |
|  |  **Followed by:** Applying this analysis to Commey, civilly committed persons have a diminished expectation of privacy.  ... Both the Supreme Court and First Circuit have compared the liberty interests of civilly committed persons to those of pretrial detainees. See Youngberg v. Romeo, 457 U.S. 307, 320, 102 S. Ct. 2452, 73 L. Ed. 2d 28 (1982); Davis v. Rennie, 264 F.3d 86, 102, 108 (1st Cir. 2001) (applying to civilly committed persons the legal standard for Fourth Amendment seizure claims brought by pretrial detainees).  **(HN12)** |
|  | **Discussion:**  | **Court:** D. Mass. | **Date:** May 21, 2012 | **Headnotes:**: HN12 |
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| 63. | [**Sovereign Bank v. Sturgis**](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:557M-DD31-F04D-D13V-00000-00), 863 F. Supp. 2d 75, 2012 U.S. Dist. LEXIS 38860  |
|  |  **Followed by:** 863 F. Supp. 2d 75 p.87The Sturgises allege that Sovereign's actions, from default to foreclosure (including the unlawful setoff) constitute violations of the Massachusetts Civil Rights Act, G.L. c. 12, § 11I ("MCRA"). To prevail under the MCRA, the Sturgises must prove that "(1) their exercise or enjoyment of rights secured by the Constitution or laws of either the United States or of the Commonwealth, (2) have been interfered with, or attempted to be interfered with, and (3) that the interference or attempted interference was by 'threats, intimidation, or coercion.'" Davis v. Rennie, 264 F.3d 86, 111 (1st Cir. 2001) (quoting Swanset Dev. Corp. v. City of Taunton, 423 Mass. 390, 668 N.E.2d 333, 337 (Mass. 1996)). The Massachusetts Supreme Judicial Court has defined the operative terms in the third prong of the test as follows: **(HN23)** |
|  | **Discussion:**  | **Court:** D. Mass. | **Date:** Mar. 22, 2012 | **Headnotes:**: HN23 |
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| 64. | [**Adaweh v. Corr. Med. Servs.**](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:54KK-1BK1-F04D-G08C-00000-00), 2011 U.S. Dist. LEXIS 149480  |
|  |  **Cited by:** ... precedent, "a police officer has a duty to act when he sees another officer using excessive force against an arrestee or pretrial detainee if the officer could realistically prevent that force and had sufficient time to do so." **Davis v. Rennie, 264 F.3d 86, 113(1st Cir. 2001)** . Furthermore, the First Circuit has suggested that this principle applies with equal force to corrections officers. Id . 98 n.9 ("For the same reason, at least one court has held that a prison guard must intervene ... |
|  | **Discussion:**  | **Court:** Dist. Maine | **Date:** Dec. 28, 2011 | **Headnotes:**: HN30, HN31 |
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| 65. | [**Rogers v. Cofield**](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:54F7-CPB1-F04D-D057-00000-00), 2011 U.S. Dist. LEXIS 141083  |
|  |  **Cited by:** ... Fed.R.Civ.P. Rule 49(b) "); see also Kosmynka v. Polaris Industries, Inc. , 462 F.3d 74 , 85 (2nd Cir. 2006) ("the step needed to preserve an objection to an inconsistent verdict depends on the type of verdict employed"); see, e.g., **Davis v. Rennie, 264 F.3d 86, 104-105(1st Cir. 2001)** . Here, as explained in footnote 12, the verdict form was neither a special verdict nor a general verdict with answers to interrogatories under Rule 49(b), Fed. R. Civ. P. (" Rule 49(b) "). See Merchant ... |
|  | **Discussion:**  | **Court:** D. Mass. | **Date:** Dec. 8, 2011 | **Headnotes:**: HN8, HN9 |
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| 66. | [**Widi v. United States DOJ**](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:549X-SMV1-F04D-G013-00000-00), 2011 U.S. Dist. LEXIS 135517  |
|  |  **Followed by:** As regards the State Defendants' duty to intervene, the Court agrees with Mr. Widi that under First Circuit precedent, "a police officer has a duty to act when he sees another officer using excessive force against an arrestee or pretrial detainee if the officer could realistically prevent that force and had sufficient time to do so." Davis, 264 F.3d at 113. Furthermore, the First Circuit has suggested that this principle applies with equal force to corrections officers. Id. ("For the same reason, at least one court has held that a prison guard must intervene when another guard uses excessive force against a prisoner"). At the same time, "the 'failure to intervene' rule applies only when an officer has 'a realistic opportunity to intercede.'" Farrah v. Gondella, 725 F. Supp. 2d 238, 246 (D. Mass. 2010) (quoting Davis, 264 F.3d at 98 n.10). **(HN30,HN31)**As regards the State Defendants' duty to intervene, the Court agrees with Mr. Widi that under First Circuit precedent, "a police officer has a duty to act when he sees another officer using excessive force against an arrestee or pretrial detainee if the officer could realistically prevent that force and had sufficient time to do so." Davis, 264 F.3d at 113. Furthermore, the First Circuit has suggested that this principle applies with equal force to corrections officers. Id. ("For the same reason, at least one court has held that a prison guard must intervene when another guard uses excessive force against a prisoner"). At the same time, "the 'failure to intervene' rule applies only when an officer has 'a realistic opportunity to intercede.'" Farrah v. Gondella, 725 F. Supp. 2d 238, 246 (D. Mass. 2010) (quoting Davis, 264 F.3d at 98 n.10). **(HN30)** |
|  | **Discussion:**  | **Court:** Dist. Maine | **Date:** Nov. 23, 2011 | **Headnotes:**: HN30, HN31 |
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| 67. | [**Parks v. Town of Leicester**](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:52BV-YH61-JCNB-P02Y-00000-00), 2011 U.S. Dist. LEXIS 23559  |
|  |  **Cited by:** ... is somewhat ambiguous, subsequent authorities have held that normally lawful restraint may constitute coercion under the MCRA if the causation requirement is met—in other words, if such restraint is applied in order to cause the plaintiff to give up his constitutional rights. See **Davis v. Rennie, 264 F.3d 86, 112(1st Cir. 2001)** (restraint of mental health patient by employees was coercion where it furthered constitutionally prohibited beating); Bullock v. City of Bos. , 1990 U.S. Dist. ... |
|  | **Discussion:**  | **Court:** D. Mass. | **Date:** Mar. 9, 2011 | **Headnotes:**: HN4, HN18 |
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| 68. | [**Wickers v. Gouin**](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:529K-95M1-JCNB-P020-00000-00), 2011 U.S. Dist. LEXIS 21133  |
|  |  **Followed by:** The complaint does not describe McNeil as participating in the attack. "'An officer who is present at the scene and who fails to take reasonable steps to protect the victim of another officer's use of excessive force [however] can be held liable under section 1983 for his nonfeasance.'" Davis v. Rennie, 264 F.3d 86, 98 (1st Cir. 2001) (quoting Gaudreault, 923 F.2d at 207). A non-participating defendant can only be found liable pursuant to section 1983 if: 1) "he or she was present when excessive force was used"; 2) he or she "observed the use of excessive force"; 3) he or she "was in a position where he or she could realistically prevent that force"; and 4) he or she "had sufficient time to do so." Davis, 264 F. 3d at 102. **(HN30)**If the use of force is deemed unconstitutional, and it is proven that McNeil was present at the scene, the key determination then is whether McNeil was in a position where he could realistically prevent the force and whether he had sufficient time to do so. See Davis, 264 F. 3d at 102. In making that determination courts look at the duration of the attack and the proximity of the officer to the attack. See Davis, 264 F. 3d at 104 (jury reasonably could have found that the defendants, who were within three feet of the plaintiff's head, had time and opportunity to intervene in attack involving five punches to the plaintiff's head); cf. Gaudreault, 923 F.2d at 207 (the defendants not within direct proximity of the plaintiff had no "realistic opportunity" to prevent attack lasting "a matter of seconds"). **(HN30)**If the use of force is deemed unconstitutional, and it is proven that McNeil was present at the scene, the key determination then is whether McNeil was in a position where he could realistically prevent the force and whether he had sufficient time to do so. See Davis, 264 F. 3d at 102. In making that determination courts look at the duration of the attack and the proximity of the officer to the attack. See Davis, 264 F. 3d at 104 (jury reasonably could have found that the defendants, who were within three feet of the plaintiff's head, had time and opportunity to intervene in attack involving five punches to the plaintiff's head); cf. Gaudreault, 923 F.2d at 207 (the defendants not within direct proximity of the plaintiff had no "realistic opportunity" to prevent attack lasting "a matter of seconds"). **(HN30)** |
|  | **Discussion:**  | **Court:** D. Mass. | **Date:** Mar. 3, 2011 | **Headnotes:**: HN30, HN31 |
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| 69. | [**Spencer v. Roche**](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:51F1-PNW1-652H-V009-00000-00), 755 F. Supp. 2d 250, 2010 U.S. Dist. LEXIS 118205  |
|  |  **Followed by:** 755 F. Supp. 2d 250 p.267Although the holding in Longval is somewhat ambiguous, subsequent authorities have held that normally lawful restraint may constitute coercion under the MCRA if the causation requirement is met—in other words, if such restraint is applied in order to cause the plaintiff to give up his constitutional rights.  ... See Davis v. Rennie, 264 F.3d 86, 112 (1st Cir. 2001) (restraint of mental health patient by employees was coercion where it furthered constitutionally prohibited beating); Bullock v. City of Bos., 1990 U.S. Dist. LEXIS 12698, 1990 WL 150017, at \*2 (D. Mass. Sep. 20, 1990) (refusal by nurse to treat sick inmate was coercion if in furtherance of constitutional deprivations); Langton v. Sec'y of Pub. Safety, 37 Mass. App. Ct. 15, 636 N.E.2d 299 (Mass. App. Ct. 1994) (involuntary psychological examination of inmate satisfied coercive conduct element of MCRA if intended to compel his silence); LeMay v. Dubois, 1998 Mass. Super. LEXIS 322, 1998 WL 151174, at \*1 (Mass. Super. Ct. Mar. 23, 1998) (disciplinary action against prisoner satisfied coercive conduct element if meant to chill further complaint).  **(HN27)** |
|  | **Discussion:**  | **Court:** D. Mass. | **Date:** Nov. 8, 2010 | **Headnotes:**: HN4, HN18, HN27 |
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| 70. | [**Oquendo-Rivera v. Toledo**](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:50YT-FS81-652J-K007-00000-00), 736 F. Supp. 2d 434, 2010 U.S. Dist. LEXIS 92989  |
|  |  **Followed by:** 736 F. Supp. 2d 434 p.440"An officer who is present at the scene and who fails to take reasonable steps to protect the victim of another officer's use of excessive force can be held liable under section 1983 for his nonfeasance." Davis v. Rennie, 264 F.3d 86, 98 (1st Cir. 2001) (internal quotations and citations omitted). The appearing defendants argue that, because a shoot-out occurred during the execution of a warrant, there was a "chaotic circumstance" to which the officers on the scene responded reasonably. (Docket No. 58 at 12.)  **(HN31)** |
|  | **Discussion:**  | **Court:** Dist.P.R. | **Date:** Sept. 7, 2010 | **Headnotes:**: HN31 |
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| 71. | [**Banks v. Hall**](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:50XB-G2D1-652J-8000-00000-00), 2010 U.S. Dist. LEXIS 90503  |
|  |  **Cited by:** ... B. Failure to Intervene "An officer who is present at the scene and who fails to take reasonable steps to protect the victim of another officer's use of excessive force can be held liable under section 1983 for his nonfeasance." **Davis v. Rennie, 264 F.3d 86, 98(1st Cir. 2001)** (internal quotation marks and citation omitted). As discussed above, the evidence in the summary judgment record shows that Holston did not arrive at the scene until Banks's injuries were being treated by emergency ... |
|  | **Discussion:**  | **Court:** D.N.H. | **Date:** Aug. 30, 2010 | **Headnotes:**: HN30, HN31 |
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| 72. | [**Farrah v. Gondella**](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:800V-48K1-652H-V002-00000-00), 725 F. Supp. 2d 238, 2010 U.S. Dist. LEXIS 74044  |
|  |  **Distinguished by:** 725 F. Supp. 2d 238 p.246The court cannot, however, so conclude as a matter of law. Unlike the incidents in Rennie and Gaudreault that were over in "a matter of seconds", 264 F. 3d at 98 n.10; 923 F.2d at 207 n.3, see also Wilson, 294 F.3d at 14 (same, "only a few seconds"), here the confrontation endured for an estimated ten minutes. Similarly, the court cannot say as a matter of law that a reasonable jury could not find that excessive force was used, singly or jointly, by the defendants. Compare Roy v. Inhabitants of City of Lewiston, 42 F.3d 691, 695 (1st Cir. 1994) (while a jury could have rationally found that the officer could have done a better job in subduing an armed and defiant plaintiff, "in our view a jury could not find that [the officer's] conduct was so deficient that no reasonable officer could have made the same choice [of resorting to deadly force]."). **(HN31)** |
|  | **Discussion:**  | **Court:** D. Mass. | **Date:** July 22, 2010 | **Headnotes:**: HN31 |
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| 73. | [**Farry v. City of Pawtucket**](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:800N-16H1-652J-M002-00000-00), 725 F. Supp. 2d 286, 2010 U.S. Dist. LEXIS 74640  |
|  |  **Cited by:** 725 F. Supp. 2d 286 p.302... A police officer has a duty to intervene in cases in which a fellow officer uses excessive force because his office carries with it an affirmative duty to act. Intervention is not required if the officers did not have a realistic opportunity to intervene. "a police officer has a duty to intervene in cases in which a fellow officer uses excessive force because his office carries with it an affirmative duty to act." **Davis v. Rennie,264 F.3d 86, 114(1st Cir. 2001)** . Immunity, however, still ... |
|  | **Discussion:**  | **Court:** Dist.R.I. | **Date:** Apr. 13, 2010 | **Headnotes:**: HN31 |
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| 74. | [**Ojeda-Rodriguez v. Zayas**](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:7Y1H-HB60-YB0P-1018-00000-00), 666 F. Supp. 2d 240, 2009 U.S. Dist. LEXIS 125946  |
|  |  **Cited by:** 666 F. Supp. 2d 240 p.266... cases in the First Circuit, the jury's $ 1,000,000.00 punitive damages award is high. Other cases in which similar or greater punitive damages were awarded involved violence and significant physical injury. See Casillas-Diaz v. Palau, 463 F.3d 77 , 80 , 86 (1st Cir. 2006) (upholding a jury's total punitive damage award in an excessive force claim of $ 1,000,000.00 divided among four separate defendants); **Davis v. Rennie,264 F.3d 86, 94** (upholding a total punitive damages award in ... |
|  | **Discussion:**  | **Court:** Dist.P.R. | **Date:** Oct. 22, 2009 | **Headnotes:**: HN38 |
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| 75. | [**Norton v. Cross Border Initiative Task Force**](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4WJB-6T10-TXFR-D3F4-00000-00), 2009 DNH 81, 2009 U.S. Dist. LEXIS 50334  |
|  |  **Cited by:** ... Moreover, the Mall surveillance video does not substantiate Norton's claims because it does not show any assault on Norton and only shows the portion of the arrest after any alleged assault occurred. The absence of evidence that a particular individual took any action against a claimant that constituted excessive force is fatal to a civil rights claim against that particular individual. See **Davis v. Rennie,264 F.3d 86, 108-09(1st Cir. 2001)** (involving insufficient evidence to support a ... |
|  | **Discussion:**  | **Court:** D.N.H. | **Date:** June 12, 2009 | **Headnotes:**: HN12, HN21 |
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| 76. | [**Scholefield v. Riverview Psychiatric Ctr.**](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4WPB-2RK0-TXFR-221H-00000-00), 2009 U.S. Dist. LEXIS 57183  |
|  |  **Followed by:**  . (footnote omitted). Davis, 264 F.3d at 101 ("In Hasenfus, we …. discussed in passing the rights of involuntarily committed mental patients and prisoners when their caretakers fail to act, stating descriptively that liability 'arises under section 1983 if the plaintiff shows that the inaction was malicious or reflected the official's 'deliberate indifference,' to the welfare of the prisoner or inmate.' Id. at 71 (citing Farmer v. Brennan, 511 U.S. 825, 837, 114 S. Ct. 1970, 128 L. Ed. 2d 811 (1994)."). **(HN4)** |
|  | **Discussion:**  | **Court:** Dist. Maine | **Date:** June 5, 2009 | **Headnotes:**: HN4, HN26 |
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| 77. | [**Harriman v. Couny**](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4WKM-PC30-TXFR-220D-00000-00), 2009 U.S. Dist. LEXIS 53129  |
|  |  **Cited by:** ... Calderon-Ortiz v. Laboy-Alvarado , 300 F.3d 60 , 63-64 (1st Cir. 2002) . In Davis v. Rennie , it approved using the Fourth Amendment --objective reasonableness standard for an excessive force claim brought by an involuntarily committed mental patient. **264 F.3d 86, 108(1st Cir. 2001)** . In O'Connor v. Huard , 117 F.3d 12 (1st Cir. 1997) , it approved Fourteenth Amendment substantive due process analysis for a pretrial detainee's claim concerning conditions of confinement: Prior to ... |
|  | **Discussion:**  | **Court:** Dist. Maine | **Date:** Mar. 31, 2009 | **Headnotes:**: HN12, HN18 |
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| 78. | [**Nagle v. N.H. State Prison**](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4WMX-1TG0-TXFR-D3D8-00000-00), 2008 U.S. Dist. LEXIS 109087  |
|  |  **Cited by:** ... In a prison setting, the use of excessive force against a prisoner is analyzed under the Eighth Amendment prohibition against cruel and unusual punishment. See Whitley v. Albers, 475 U.S. 312 , 319-20 , 106 S. Ct. 1078 , 89 L. Ed. 2d 251 (1986) . See also See **Davis v. Rennie,264 F.3d 86, 98n.9 (1st Cir. 2001)** (citing Hudson v. McMillian, 503 U.S. 1 , 4 , 112 S. Ct. 995 , 117 L. Ed. 2d 156 (1992) ("A convicted prisoner may bring a claim for use of excessive force under ... |
|  | **Discussion:**  | **Court:** D.N.H. | **Date:** Dec. 18, 2008 | **Headnotes:**: HN7 |
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| 79. | [**Rivera v. Toledo**](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4T3F-0520-TXFR-R2BP-00000-00), 2008 U.S. Dist. LEXIS 56883  |
|  |  **Cited by:** ... Calvi v. Knox County, 470 F. 3d 422 , 428 (1st Cir. 2006) ("a bystander officer who has a realistic opportunity to prevent the use of excessive force by a fellow officer may in certain circumstances be held liable for failure to intervene."); **Davis v. Rennie,264 F. 3d 86, 98(1st Cir. 2001)** ("police officers have a duty to intervene when they see another officer use excessive force against a pretrial detainee."). These cases show that Plaintiffs' allegations set forth a plausible entitlement ... |
|  | **Discussion:**  | **Court:** Dist.P.R. | **Date:** July 28, 2008 | **Headnotes:**: HN30, HN31 |
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| 80. | [**Alves v. Murphy**](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4RKF-NWN0-TXFR-02R4-00000-00), 530 F. Supp. 2d 381, 2008 U.S. Dist. LEXIS 2436  |
|  |  **Cited by:** 530 F. Supp. 2d 381 p.387... Due Process Clause of the Fourteenth Amendment , but applying the Eighth Amendment "deliberate indifference" standard to pre-trial detainee's failure-to-protect claim). Nevertheless, " [t]he strand of substantive due process jurisprudence primarily at issue here," **Davis v. Rennie,264 F.3d 86, 97(1st Cir. 2001)** , cert. denied, 535 U.S. 1053 , 122 S. Ct. 1909 , 152 L. Ed. 2d 820 (2002) , that is, the duty of the state to protect those that it has confined, recognizes in various ways ... |
|  | **Discussion:**  | **Court:** D. Mass. | **Date:** Jan. 14, 2008 | **Headnotes:**: HN4, HN6 |
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| 81. | [**Alvarado-Sanchez v. First Hosp. Corp.**](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4RKF-DWG0-TXFR-R2T5-00000-00), 2008 U.S. Dist. LEXIS 2300  |
|  |  **Cited by:** ... "For involuntarily committed patients, 'a set of unique rules has developed' according to which 'failures to act . . . may comprise a due process or other constitutional violation because the state-imposed circumstance of confinement prevents such individuals from helping themselves.'" **Davis v. Rennie,264 F.3d 86, 98(1st Cir. 2001)** (quoting Hasenfus v. LaJeunesse, 175 F.3d 68 , 71 (1st Cir. 1999)) ; see also Youngberg v. Romeo, 457 U.S. 307 , 314-25 , 102 S. Ct. 2452 , 73 L. ... |
|  | **Discussion:**  | **Court:** Dist.P.R. | **Date:** Jan. 11, 2008 | **Headnotes:**: HN4, HN31 |
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| 82. | [**Hurd v. Granville**](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4R5P-RG50-TXFR-D2J0-00000-00), 2007 U.S. Dist. LEXIS 85386  |
|  |  **Cited by:** ... 457 U.S. 307 , 315-16 , 102 S. Ct. 2452 , 73 L. Ed. 2d 28 (1982) . A state actor has a duty to protect incarcerated prisoners from harm by another state actor. See DeShaney, 489 U.S. at 199 , **Davis v. Rennie,264 F.3d 86, 98(1st Cir. 2001)** . An officer may be held liable under § 1983 "for his failure to intervene in appropriate circumstances to protect an arrestee from the excessive use of force by his fellow officers." See Gaudreault v. Municipality of Salem, 923 F.2d ... |
|  | **Discussion:**  | **Court:** D.N.H. | **Date:** Nov. 2, 2007 | **Headnotes:**: HN4 |
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| 83. | [**Brown v. Sweeney**](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4RBV-VK10-TXFR-02RY-00000-00), 526 F. Supp. 2d 126, 2007 U.S. Dist. LEXIS 91711  |
|  |  **Cited by:** 526 F. Supp. 2d 126 p.134... involves putting in fear for the purpose of compelling or deterring conduct . . . ['Coercion' involves] 'the application to another of such force, either physical or moral, as to constrain [a person] to do against his will something he would not otherwise have done.'" **Davis v. Rennie,264 F.3d 86, 111(1st. Cir. 2001)** . See also Planned Parenthood League of Mass., Inc. v. Blake, 417 Mass. 467 , 474-75 , 631 N.E.2d 985 (1994) . Brown was threatened with arrest if he did not waive his ... |
|  | **Discussion:**  | **Court:** D. Mass. | **Date:** Nov. 1, 2007 | **Headnotes:**: HN24 |
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| 84. | [**Marcano-Betancourt v. Puerto Rico**](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4PB8-YFH0-TXFR-R2VH-00000-00), 2007 U.S. Dist. LEXIS 56387  |
|  |  **Cited by:** ... Calvi v. Knox County, 470 F. 3d 422 , 428 (1st Cir. 2006) ("a bystander officer who has a realistic opportunity to prevent the use of excessive force by a fellow officer may in certain circumstances be held liable for failure to intervene."); **Davis v. Rennie,264 F. 3d 86, 98(1st Cir. 2001)** ("police officers have a duty to intervene when they see another officer use excessive force against a pretrial detainee.") This line of cases show that Plaintiffs' allegations set forth a plausible ... |
|  | **Discussion:**  | **Court:** Dist.P.R. | **Date:** Aug. 1, 2007 | **Headnotes:**: HN30, HN31 |
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| 85. | [**Clarke v. Blais**](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4MJT-8JX0-TVVK-B2PX-00000-00), 2006 U.S. Dist. LEXIS 89941  |
|  |  **Followed by:** This standard is refined according to the category of case at hand. "[W]hen authorities use force to put down a prison disturbance," Hudson, 503 U.S. at 6, the standard becomes "whether force was applied in a good faith effort to maintain or restore discipline or maliciously and sadistically for the very purpose of causing harm." Whitley, 475 U.S. at 320-21.  ... The second standard is the appreciably lower "objective reasonableness standard" familiar to Fourth Amendment jurisprudence, which has been applied to excessive force claims brought by pretrial detainees and persons committed to state custody in civil proceedings. See, e.g., Davis v. Rennie, 264 F.3d 86, 101-102 (1st Cir. 2001) (involving a claim by an involuntarily committed mental patient); Johnson-El v. Schoemehl, 878 F.2d 1043, 1048 (8th Cir.), (involving a claim by a pretrial detainee and holding that "practices" rationally related to prison security are still unconstitutional if they are "excessive in light of their purpose"); Rankin v. Klevenhagen, 5 F.3d 103, 105-106 (5th Cir. 1993) (recognizing the standard is lower for pretrial detainees than for convicted inmates or pretrial detainees whose custody also flows from parole violations).  **(HN12,HN18)** |
|  | **Discussion:**  | **Court:** Dist. Maine | **Date:** Dec. 12, 2006 | **Headnotes:**: HN12, HN18 |
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| 86. | [**Griffin v. Town of Cutler**](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4KXN-1Y60-TVVK-B22D-00000-00), 2006 U.S. Dist. LEXIS 66818  |
|  |  **Cited by:** ... , 107 S. Ct. 3034 , 97 L. Ed. 2d 523 (1987) . In other words, 'the doctrine does not shield public officials who, from an objective standpoint, should have known that their conduct was unlawful." Pagan , 448 F.3d at 31 . See also **Davis v. Rennie, 264 F.3d 86, 113(1st Cir. 2001)** ("Qualified immunity protects state actors 'from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person ... |
|  | **Discussion:**  | **Court:** Dist. Maine | **Date:** Sept. 15, 2006 | **Headnotes:**: HN27 |
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| 87. | [**Bernier v. Unicco Serv. Co.**](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4JSK-6T60-TVVK-B39K-00000-00), 2006 U.S. Dist. LEXIS 21778  |
|  |  **Distinguished by:** In Davis, the defendants falsified required written reports of the incident in question, filed a groundless complaint against the plaintiff and testified that they did not see conduct which other witnesses testified occurred in their presence. Id. at 115-16.  ... Azzaratta's deposition testimony does not begin to rise to the level of the evidence in Davis. |
|  | **Discussion:**  | **Court:** Dist. Maine | **Date:** Apr. 19, 2006 | **Headnotes:**: HN38 |
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| 88. | [**Gonzalez v. Exec. Airlines**](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4JMM-71M0-TVXJ-S38G-00000-00), 236 F.R.D. 73, 2006 U.S. Dist. LEXIS 15263  |
|  |  **Cited by:** 236 F.R.D. 73 p.80... (N.Y. 1990) ; State v. Allewalt, 308 Md. 89 , 517 A.2d 741 , 745-47 (Md. 1986) ; see also Mukamusoni v. Ashcroft, 390 F.3d 110 (1st Cir. 2004) ; **Davis v. Rennie,264 F.3d 86(1st Cir. 2001)** . However, the Court here takes this opportunity to place more emphasis on the fact that there are still serious misgivings within the psychiatric community over the validity of the PTSD diagnosis. "Controversy has haunted the diagnosis of posttraumatic stress disorder (PTSD) ever since its appearance ... |
|  | **Discussion:**  | **Court:** Dist.P.R. | **Date:** Mar. 6, 2006 |
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| 89. | [**Buchanan v. Maine**](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4J92-HVR0-TVVK-B3BC-00000-00), 417 F. Supp. 2d 45, 2006 U.S. Dist. LEXIS 6292  |
|  |  **Followed by:** 417 F. Supp. 2d 45 p.56The presumption, however, is not conclusive. The touchstone of the warrantless entry analysis under the Fourth Amendment is objective reasonableness: "the question is whether the officers' actions are objectively reasonable' in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation." Graham v. Connor, 490 U.S. 386, 397, 109 S. Ct. 1865, 104 L. Ed. 2d 443 (1989); Terry v. Ohio, 392 U.S. 1, 21, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968) (in analyzing the reasonableness of a search or seizure, "it is imperative that the facts be judged against an objective standard"); Davis v. Rennie, 264 F.3d 86, 101-02 (1st Cir. 2001). In applying the reasonableness standard, courts should pay "careful attention to the facts and circumstances of each particular case, including the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he is actively resisting arrest or attempting to evade arrest by flight." Graham, 490 U.S. at 396 (citing Tennessee v. Garner, 471 U.S. 1, 8-9, 105 S. Ct. 1694, 85 L. Ed. 2d 1 (1985)) (the question is "whether the totality of the circumstances justifie[s] a particular sort of search or seizure"). **(HN12)** |
|  | **Discussion:**  | **Court:** Dist. Maine | **Date:** Feb. 16, 2006 | **Headnotes:**: HN12 |
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| 90. | [**Orwat v. Maloney**](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4FPR-2VS0-TVVD-N3C9-00000-00), 360 F. Supp. 2d 146, 2005 U.S. Dist. LEXIS 3847  |
|  |  **Cited by:** 360 F. Supp. 2d 146 p.156... While Shugrue's failure to intervene to prevent Padula's assault could amount to a constitutional deprivation, see, e.g., Gaudreault v. Municipality of Salem , 923 F.2d 203 , 207 n.3 (1 Cir., 1990) (stating that police officers at scene have duty to intervene if they witness another officer use excessive force) 3 In **Davis v. Rennie, 264 F.3d 86** (1 Cir., 2001), cert. denied , 535 U.S. 1053 , 122 S. Ct. 1909 , 152 L. Ed. 2d 820 (2002) , the First Circuit noted, without opinion, that ... |
|  | **Discussion:**  | **Court:** D. Mass. | **Date:** Feb. 10, 2005 | **Headnotes:**: HN30, HN31 |
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| 91. | [**McIntyre v. United States**](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4DGK-9VS0-TVVD-N2K8-00000-00), 336 F. Supp. 2d 87, 2004 U.S. Dist. LEXIS 20127  |
|  |  **Cited by:** 336 F. Supp. 2d 87 p.111... In those situations, "it is the State's affirmative act of restraining the individual's freedom to act on his own behalf . . . which is the deprivation of liberty' triggering the protections of the Due Process Clause , not its failure to act to protect his liberty interests against harms inflicted by other means." Id.; see also **Davis v. Rennie, 264 F.3d 86, 98(1st Cir. 2001)** ("Once the state restrains an individual's liberty, rendering that individual unable to act for himself . . . the ... |
|  | **Discussion:**  | **Court:** D. Mass. | **Date:** Sept. 30, 2004 | **Headnotes:**: HN4 |
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| 92. | [**Dellairo v. Garland**](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:46CJ-5CM0-0038-Y2KJ-00000-00), 222 F. Supp. 2d 86, 2002 U.S. Dist. LEXIS 13592  |
|  |  **Cited by:** 222 F. Supp. 2d 86 p.92... Qualified immunity shields government employees performing their discretionary functions from civil liability "as long as their actions could reasonably have been thought consistent with the rights they are alleged to have violated." Anderson v. Creighton , 483 U.S. 635 , 638 , 97 L. Ed. 2d 523 , 107 S. Ct. 3034 (1987) . See also **Davis v. Rennie, 264 F.3d 86, 113(1st Cir. 2001)** ("Qualified immunity protects state actors 'from liability for civil damages insofar as their conduct ... |
|  | **Discussion:**  | **Court:** Dist. Maine | **Date:** July 25, 2002 | **Headnotes:**: HN27 |
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| 93. | [**Hogar Club Paraiso, Inc. v. Llavona**](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:46K3-D3S0-0038-Y52Y-00000-00), 218 F. Supp. 2d 157, 2002 U.S. Dist. LEXIS 15371  |
|  |  **Cited by:** 218 F. Supp. 2d 157 p.159... theory, it is not required that the plaintiffs prove a violation of a specific liberty or property interest; however, the state's conduct must be such that 'it shocks the conscience.'" Pittsley v. Warish , 927 F.2d at 6 (citing Rochin v. California , 342 U.S. 165 , 172 , 96 L. Ed. 183 , 72 S. Ct. 205 (1952)) ; see also **Davis v. Rennie, 264 F.3d 86, 98-99(1st Cir. 2001)** ; Barrington Cove Limited Partnership v. Rhode Island and Mortgage Finance Corp. , 246 F.3d 1 , 7 **(1st Cir. 2001)** ... |
|  | **Discussion:**  | **Court:** Dist.P.R. | **Date:** July 23, 2002 | **Headnotes:**: HN3 |
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| 94. | [**Simpson v. Gallant**](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:465K-YWV0-0038-Y4Y1-00000-00), 231 F. Supp. 2d 341, 2002 U.S. Dist. LEXIS 11600  |
|  |  **Cited by:** 231 F. Supp. 2d 341 p.349... Qualified immunity shields government employees performing their discretionary functions from civil liability "as long as their actions could reasonably have been thought consistent with the rights they are alleged to have violated." Anderson v. Creighton , 483 U.S. 635 , 638 , 97 L. Ed. 2d 523 , 107 S. Ct. 3034 (1987) . See also **Davis v. Rennie, 264 F.3d 86, 113(1st Cir. 2001)** ("Qualified immunity protects state actors 'from liability for civil damages insofar as their conduct ... |
|  | **Discussion:**  | **Court:** Dist. Maine | **Date:** June 26, 2002 | **Headnotes:**: HN27 |
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| 95. | [**Hogar Club Paraiso, Inc. v. Llavona**](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:468B-KPG0-0038-Y134-00000-00), 208 F. Supp. 2d 178, 2002 U.S. Dist. LEXIS 12505  |
|  |  **Cited by:** 208 F. Supp. 2d 178 p.180... The Court is analyzing plaintiffs's claim under the rubric of procedural due process, given that plaintiffs have not alleged a substantive due process violation, and the Court does not recognize that one exists under the facts alleged in the complaint. See, e.g., **Davis v. Rennie, 264 F.3d 86, 97-99(1st Cir. 2001)** ; Cruz-Erazo v. Rivera-Montanez , 212 F.3d 617 , 622-24 (1st Cir. 2000) ; PFZ Properties , 928 F.2d at 31-32 (discussing that plaintiff's allegations do not rise to the ... |
|  | **Discussion:**  | **Court:** Dist.P.R. | **Date:** June 21, 2002 | **Headnotes:**: HN3 |
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| 96. | [**Pelletier v. Magnusson**](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:45NP-WH70-0038-Y2P4-00000-00), 201 F. Supp. 2d 148, 2002 U.S. Dist. LEXIS 7103  |
|  |  **Cited by:** 201 F. Supp. 2d 148 p.164... (a deliberate indifference suicide case requires a showing of a "strong likelihood, rather than a mere possibility, that self infliction of harm will occur," citation and internal quotation marks omitted). The First Circuit has yet to wrestle in a published decision with Farmer in the context of an Eighth Amendment deliberate indifference claim involving a custodial suicide. See **Davis v. Rennie, 264 F.3d 86, 101(1st Cir. 2001)** (discussing Farmer and the deliberate indifference ... |
|  | **Discussion:**  | **Court:** Dist. Maine | **Date:** Apr. 17, 2002 | **Headnotes:**: HN7, HN12, HN30 |
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| 97. | [**Pelletier v. Magnusson**](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:45NP-WH80-0038-Y2P5-00000-00), 195 F. Supp. 2d 214, 2002 U.S. Dist. LEXIS 7104  |
|  |  **Cited by:** 195 F. Supp. 2d 214 p.232, p.241... (a deliberate indifference suicide case requires a showing of a "strong likelihood, rather than a mere possibility, that self infliction of harm will occur," citation and internal quotation marks omitted). The First Circuit has yet to wrestle in a published decision with Farmer in the context of an Eighth Amendment deliberate indifference claim involving a custodial suicide. See **Davis v. Rennie, 264 F.3d 86, 101(1st Cir. 2001)** (discussing Farmer and the deliberate indifference ... |
|  | **Discussion:**  | **Court:** Dist. Maine | **Date:** Apr. 16, 2002 | **Headnotes:**: HN7, HN12, HN27, HN30 |
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| 98. | [**Grant v. John Hancock Mut. Life Ins. Co.**](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:44WK-7N60-0038-Y1TH-00000-00), 183 F. Supp. 2d 344, 2002 U.S. Dist. LEXIS 239  |
|  |  **Cited by:** 183 F. Supp. 2d 344 p.371... times by Glancy and/or O'Brien, constitute a violation of Grant's constitutional rights under the Fourth and/or Fourteenth Amendments , and such conduct may constitute coercion and/or intimidation sufficient to sustain a claim under the MCRA. See **Davis v. Rennie, 264 F.3d 86, 110-12(1st Cir. 2001)** (use of excessive force by a mental health worker, and the beating and restraining of the patient by others satisfies the requirements of intimidation and coercion under the MCRA). For ... |
|  | **Discussion:**  | **Court:** D. Mass. | **Date:** Jan. 8, 2002 | **Headnotes:**: HN12, HN18 |
| **2nd Circuit - U.S. District Courts** |
| 99. | [**Surlock v. Delaney**](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5JYN-RYX1-F04F-025K-00000-00), 2016 U.S. Dist. LEXIS 74360  |
|  |  **Cited by:** ... Fourteenth Amendment claims alleged by involuntarily committed patients, but noting that "conduct may shock the conscience of federal judges only if [defendants] acted with 'deliberate indifference'") (emphasis omitted); but see **Davis v. Rennie, 264 F.3d 86, 99(1st Cir. 2001)** (finding that the lower court did not err by declining to give a shocks the conscience instruction for a substantive due process claim alleged by an involuntarily committed patient). As discussed above, under this ... |
|  | **Discussion:**  | **Court:** Northern Dist.N.Y. | **Date:** June 8, 2016 | **Headnotes:**: HN4 |
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| 100. | [**O'Dell v. Bill**](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5FB9-KH51-F04F-00ST-00000-00), 2014 U.S. Dist. LEXIS 182152  |
|  |  **Distinguished by:** Other circuits follow the Supreme Court's ruling in County of Sacramento v. Lewis which applied a "shocks the conscience" standard to all substantive due process claims involving an "abusive executive action." 523 U.S. 833, 846, 118 S. Ct. 1708, 140 L. Ed. 2d 1043 (1998). See Benn v. Universal Health Sys., Inc., 371 F.3d 165, 174 (3d Cir. 2004) (applying the shocks the conscience standard to Fourteenth Amendment claims alleged by involuntarily committed patients); Moore ex rel. Moore v. Briggs, 381 F.3d 771, 773 (8th Cir. 2004) (applying the shocks the conscience standard to Fourteenth Amendment claims alleged by involuntarily committed patients, but noting that "conduct may shock the conscience of federal judges only if [defendants] acted with 'deliberate indifference.'" (emphasis in original).); Davis v. Rennie, 264 F.3d 86, 99 (1st Cir. 2001) (finding lower court did not err by declining to give a shocks the conscience instruction for a claim alleged by an involuntarily committed patient). Under this standard, "conduct intended to injure in some way unjustifiable by any government interest is the sort of official action most likely to rise to the conscience-shocking level." Lewis, 523 U.S. at 849.  |
|  | **Discussion:**  | **Court:** Northern Dist.N.Y. | **Date:** Nov. 25, 2014 |
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| 101. | [**Ziemba v. Armstrong**](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4K1H-R460-0038-Y1M0-00000-00), 433 F. Supp. 2d 248, 2006 U.S. Dist. LEXIS 32470  |
|  |  **Harmonized by:** 433 F. Supp. 2d 248 p.254... The Second Circuit held that $ 250,000 would be the maximum compensatory damages awarded to DiSorbo . Thus, although DiSorbo's injuries were somewhat greater than Ziemba's injuries, the Second Circuit permitted a compensatory damages award two-and-one-half times as high as that awarded to Ziemba. In **Davis v. Rennie, 264 F.3d 86(1st Cir. 2001)** , an incident occurred at a state mental hospital while staff members were attempting to put the plaintiff patient in four-point restraints. The defendant ... |
|  | **Discussion:**  | **Court:** Dist. Conn. | **Date:** May 16, 2006 | **Headnotes:**: HN37 |
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| 102. | [**In re Simon II Litig.**](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:47X6-BB30-0038-Y0WY-00000-00), 2002 U.S. Dist. LEXIS 25632  |
|  |  **Cited by:** ... The court of appeals for the First Circuit in Davis v. Rennie upheld a 10 to 1 ratio of punitive to compensatory damages stating that there was significant actual and potential harm to the plaintiff that seriously affected his quality of life. **264 F.3d 86, 117(1st Cir. 2001)** , cert. denied sub nom Rennie v. Davis, 535 U.S. 1053 , 122 S. Ct. 1909 , 152 L. Ed. 2d 820 (2002) . The jury in Continental Trend Resources v. Oxy USA awarded the plaintiffs $ 269,000 in compensatory ... |
|  | **Discussion:**  | **Court:** Eastern Dist.N.Y. | **Date:** Oct. 22, 2002 | **Headnotes:**: HN37 |
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| 103. | [**In re Simon II Litig.**](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:471F-PWS0-0038-Y0TV-00000-00), 211 F.R.D. 86, 2002 U.S. Dist. LEXIS 19773  |
|  |  **Cited by:** 211 F.R.D. 86 p.164... The court of appeals for the First Circuit in Davis v. Rennie upheld a 10 to 1 ratio of punitive to compensatory damages stating that there was significant actual and potential harm to the plaintiff that seriously affected his quality of life. **264 F.3d 86, 117(1st Cir. 2001)** , cert. denied sub nom Rennie v. Davis , 535 U.S. 1053 , 122 S. Ct. 1909 , 152 L. Ed. 2d 820 (2002) . The jury in Continental Trend Resources v. Oxy USA awarded the plaintiffs $ 269,000 in compensatory damages ... |
|  | **Discussion:**  | **Court:** Eastern Dist.N.Y. | **Date:** Oct. 15, 2002 | **Headnotes:**: HN37 |
| **3rd Circuit - U.S. District Courts** |
| 104. | [**Bullock v. Cabasa**](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5DC9-FF51-F04D-W2KR-00000-00), 2014 U.S. Dist. LEXIS 146604  |
|  |  **Explained by:** ... involuntarily committed mental patients. The Eighth Circuit has held that the excessive force claim of a mental patient who was involuntarily committed after having been found not guilty of murder by reason of insanity should be evaluated under the objective reasonableness standard usually applied to excessive force claims brought by pre-trial detainees. Andrews v. Neer , 253 F.3d 1052 , 1061 (8th Cir. 2001) . The First Circuit agrees. See **Davis v. Rennie, 264 F.3d 86, 108(1st Cir. 2001)** ... |
|  | **Discussion:**  | **Court:** Dist.N.J. | **Date:** Oct. 14, 2014 |
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| 105. | [**Buchanan v. W. Whiteland Twp.**](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4VHJ-7WB0-TXFR-P33G-00000-00), 2009 U.S. Dist. LEXIS 6653  |
|  |  **Distinguished by:** A duty to intervene has been imposed in cases where officers failed to stop an ongoing attack. See e.g Skevofilax v. Quigley, 586 F. Supp. 532 (D.N.J. 1984) (duty to intervene where uniformed police officer refused to intervene in unprovoked beating of a man by off duty officers); D'Arrigo v. Gloucester City, Civ A. No. 04-5967, 2007 U.S. Dist. LEXIS 44316, 2007 WL 1755970, 7 (D.N.J. June 19, 2007) (allowing claim of failure to intervene to go to jury where defendant, who was standing directly behind Plaintiff when officers attacked him, failed to intervene to prevent officer from repeatedly punching Plaintiff in the chest); Davis v. Rennie, 264 F.3d 86 (1st Cir. 2001) (finding duty to intervene where patient was repeatedly punched in the head by mental health workers); Byrd v. Brishke, 466 F.2d 6 (7th Cir. 1972) (finding duty to intervene where officers repeatedly beat a suspect and refused medical treatment for over one hour). However, the alleged excessive force in this case was not an ongoing attack.  **(HN30,HN31)** |
|  | **Discussion:**  | **Court:** Eastern Dist. Pa. | **Date:** Jan. 7, 2009 | **Headnotes:**: HN30, HN31 |
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| 106. | [**Buchanan v. W. Whiteland Twp.**](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4VBC-JR10-TXFR-P35G-00000-00), 2008 U.S. Dist. LEXIS 106149  |
|  |  **Cited by:** ... (allowing claim of failure to intervene to go to jury where defendant, who was standing directly behind Plaintiff when officers attacked him, failed to intervene to prevent officer from repeatedly punching Plaintiff in the chest); **Davis v. Rennie, 264 F.3d 86(1st Cir. 2001)** (finding duty to intervene where patient was repeatedly punched in the head by mental health workers); Byrd v. Brishke , 466 F.2d 6 (7th Cir. 1972) (finding duty to intervene where officers repeatedly beat a suspect ... |
|  | **Discussion:**  | **Court:** Eastern Dist. Pa. | **Date:** Jan. 7, 2009 | **Headnotes:**: HN30, HN31 |
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| 107. | [**Vak La v. Hayducka**](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:48YP-J1P0-0038-Y3HV-00000-00), 269 F. Supp. 2d 566, 2003 U.S. Dist. LEXIS 10907  |
|  |  **Cited by:** 269 F. Supp. 2d 566 p.581... while fellow officers gave prolonged beatings to individuals who posed no apparent threat. See Skevofilax, 586 F. Supp. at 532 (uniformed police officers refusing to intervene in an unprovoked beating of a man by off-duty police officers); **Davis v. Rennie,264 F.3d 86(1st Cir. 2001)** (patient punched repeatedly in the head by mental health workers); Mick v. Brewer, 76 F.3d 1127 (10th Cir. 1996) (secret service agent failed to intervene when officer beat and dragged a woman who inadvertently ... |
|  | **Discussion:**  | **Court:** Dist.N.J. | **Date:** June 24, 2003 | **Headnotes:**: HN4, HN31 |
| **4th Circuit - Court of Appeals** |
| 108. | [**Tire Eng'g & Distrib., LLC v. Shandong Linglong Rubber Co.**](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:55TP-PSG1-F04K-M2DN-00000-00), 682 F.3d 292, 2012 U.S. App. LEXIS 11397, Copy. L. Rep. (CCH) P30263, 103 U.S.P.Q.2d (BNA) 1183  |
|  |  **Cited by:** 682 F.3d 292 p.314... 620 F.2d 1247 , 1258 n.8 (8th Cir. 1980)) , quoted with approval by Henderson v. Winston , No. 94-2071, 1995 U.S. App. LEXIS 15833 , 1995 WL 378602 at \* 5 (4th Cir., June 27, 1995) . See also **Davis v. Rennie, 264 F.3d 86, 105(1st Cir. 2001)** (same). Quigley v. Rosenthal , 327 F.3d 1044 , 1073-74 (10th Cir. 2003) , exemplifies this sensible approach. In Quigley , the Tenth Circuit faced a similar situation to this case, having dismissed one of five claims in a case where the ... |
|  | **Discussion:**  | **Court:** 4th Cir. Va. | **Date:** June 6, 2012 | **Headnotes:**: HN16 |
| **4th Circuit - U.S. District Courts** |
| 109. | [**Wallace v. Poulos**](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:557M-XB21-F04D-F1CN-00000-00), 861 F. Supp. 2d 587, 2012 U.S. Dist. LEXIS 39176  |
|  |  **Cited by:** 861 F. Supp. 2d 587 p.606... (1st Cir. 2006) . Therefore, when using this guidepost to determine whether a defendant had fair notice about the amount of the award, the appropriate benchmark is the amount of punitive damages awarded in analogous cases. Id.; **Davis v. Rennie, 264 F.3d 86, 117(1st Cir. 2001)** , cert. denied , 535 U.S. 1053 , 122 S. Ct. 1909 , 152 L. Ed. 2d 820 (2002) . The cases cited by Plaintiff in support of the punitive damages awards here are largely inapposite because the vast majority of them ... |
|  | **Discussion:**  | **Court:** Dist. Md. | **Date:** Mar. 22, 2012 |
| **5th Circuit - U.S. District Courts** |
| 110. | [**Compean v. Vasquez**](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5NP4-J001-F04F-C454-00000-00), 2017 U.S. Dist. LEXIS 84292  |
|  |  **Followed by:** Rogers v. Buchanan, No. 3:12-CV-2458-M-BN, 2015 U.S. Dist. LEXIS 69646, 2015 WL 3439145, at \*5 (N.D. Tex. Mar. 27, 2015) (citing Hale v. Townley, 45 F.3d 914, 919 (5th Cir. 1995)). An officer may be liable if he fails to take reasonable measures to protect the plaintiff from excessive force.  ... Hale, 45 F.3d at 919; see also Spencer v. Rau, 542 F. Supp. 2d 583, 594 (W.D. Tex. 2007) (relying on Davis v. Rennie, 264 F.3d 86, 97-98 (1st Cir. 2001)) (holding that an officer may be liable for failing to intervene if he "was present when the force was used, observed the use of excessive force, was in a position where he could realistically prevent the force, and had sufficient time to prevent it").  **(HN30)** |
|  | **Court:** Northern Dist. Tex. | **Date:** Apr. 21, 2017 | **Headnotes:**: HN30 |
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| 111. | [**Rogers v. Buchanan**](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5G3M-3GF1-F04F-C4JY-00000-00), 2015 U.S. Dist. LEXIS 69646  |
|  |  **Cited by:** ... Blacke v. City of Galveston, Tex. , No. 10-cv-388, 2014 U.S. Dist. LEXIS 25351 , 2014 WL 794025 , at \* 8 (S.D. Tex. Feb. 27, 2014) (citing Spencer v. Rau , 542 F. Supp. 2d 583 , 594 (W.D. Tex. 2007) (relying on **Davis v. Rennie, 264 F.3d 86, 97-98(1st Cir. 2001)** (holding that an officer can be held liable under Section 1983 for failure to intervene "if the defendant was present when the force was used, observed the use of excessive force, was in a position where he could realistically ... |
|  | **Discussion:**  | **Court:** Northern Dist. Tex. | **Date:** Mar. 27, 2015 | **Headnotes:**: HN30, HN31 |
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| 112. | [**Harmon v. Dallas Police Dep't**](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5DPK-GPT1-F04F-C2NY-00000-00), 2014 U.S. Dist. LEXIS 165768  |
|  |  **Cited by:** ... Backe v. City of Galveston, Tex ., Civ. No. 10-cv-388, 2014 U.S. Dist. LEXIS 25351 , 2014 WL 794025 , at \* 8 (S.D. Tex. Feb. 27, 2014) (citing Spencer v. Rau , 542 F. Supp. 2d 583 , 594 (W.D. Tex. 2007) (relying on **Davis v. Rennie, 264 F.3d 86, 97-98(1st Cir. 2001)** (holding that a police officer can be held liable under 42 U.S.C. § 1983 for failure to intervene "if the defendant was present when the force was used, observed the use of excessive force, was in a position where he ... |
|  | **Discussion:**  | **Court:** Northern Dist. Tex. | **Date:** Oct. 21, 2014 | **Headnotes:**: HN30, HN31 |
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| 113. | [**Backe v. City of Galveston**](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5BMD-T241-F04F-C4JB-00000-00), 2014 U.S. Dist. LEXIS 25351  |
|  |  **Cited by:** ... However, this "bystander" liability obtains only if the bystander defendant had reasonable opportunity to intercede and prevent the constitutional violation. See Spencer v. Rau , 542 F. Supp. 2d 583 , 594 (W.D. Tex. 2007) (relying upon **Davis v. Rennie, 264 F.3d 86, 97-98(1st Cir. 2001))** . Even under the version of the facts advocated by Plaintiffs, Mrs. Belluomini was picked up by her hair and tossed to the side during the course of a fraught and violent encounter. In such circumstances, ... |
|  | **Discussion:**  | **Court:** Southern Dist. Tex. | **Date:** Feb. 27, 2014 | **Headnotes:**: HN31 |
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| 114. | [**Gilbert v. French**](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4RTV-4TV0-TXFR-Y2XB-00000-00), 2008 U.S. Dist. LEXIS 10193  |
|  |  **Cited by:** ... for failure to intervene "if the defendant was present when the force was used, observed the use of excessive force, was in a position where he could realistically prevent the force, and had sufficient time to prevent it." Id. (citing **Davis v. Rennie,264 F.3d 86, 97-98(1st Cir. 2001))** ; see also Lanigan v. Vill. of E. Hazel Crest, 110 F.3d 467 , 477 (7th Cir. 1997) (enunciating a similar test for failure to intervene); Anderson v. Branen, 17 F.3d 552 , 556 (2d Cir. 1994) ... |
|  | **Discussion:**  | **Court:** Southern Dist. Tex. | **Date:** Feb. 12, 2008 | **Headnotes:**: HN30, HN31 |
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| 115. | [**Spencer v. Rau**](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4R2H-TFJ0-TXFR-Y2K1-00000-00), 542 F. Supp. 2d 583, 2007 U.S. Dist. LEXIS 82081  |
|  |  **Followed by:** 542 F. Supp. 2d 583 p.594The Fifth Circuit has not enunciated the elements of a § 1983 failure to intervene claim. For guidance, we can look to the First Circuit which has clarified the elements of a failure to intervene claim. The First Circuit has held that a defendant can be liable under § 1983 for failing to intervene if the defendant was present when the force was used, observed the use of excessive force, was in a position where he could realistically prevent the force, and had sufficient time to prevent it. Davis v. Rennie, 264 F.3d 86, 97-98 (1st Cir. 2001). **(HN30)** |
|  | **Discussion:**  | **Court:** Western Dist. Tex. | **Date:** Oct. 11, 2007 | **Headnotes:**: HN30 |
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| 116. | [**Tufaro v. City of New Orleans**](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4D6S-5PD0-0038-Y0G7-00000-00), 2004 U.S. Dist. LEXIS 17146  |
|  |  **Followed by:** The First Circuit is in accord with the Seventh Circuit. It has held that a defendant can only be held liable under § 1983 for failing to intervene if he was present when excessive force was used, observed the use of excessive force, was in a position where he could realistically prevent that force, and had sufficient time to do so. Davis v. Rennie, 264 F.3d 86 (1st Cir. 2001); Gaudreault v. Mun. of Salem, Mass., 923 F.2d 203 (1st Cir. 1990). **(HN30)** |
|  | **Discussion:**  | **Court:** Eastern Dist. La. | **Date:** Aug. 26, 2004 | **Headnotes:**: HN30 |
| **6th Circuit - Court of Appeals** |
| 117. | [**Minick v. Metro. Gov't of Nashville**](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:59MR-DX31-F04K-P0GJ-00000-00), 543 Fed. Appx. 507, 2013 U.S. App. LEXIS 21576, 2013 FED App. 901N (6th Cir.), 2013 FED App. 0901N (6th Cir.)  |
|  |  **Distinguished by:** 543 Fed. Appx. 507 p.510Durham held summary judgment inappropriate because "precedent holding police officers . . . liable for failure to intervene was sufficient to place the nurse who caused the conflict on notice that she had a duty to protect [the] plaintiff while under her charge." Id. (emphasis added).  ... Minick alleges no comparable facts. Cf. Davis v. Rennie, 264 F.3d 86, 93, 114 (1st Cir. 2001) (citing Durham, court held that supervising nurse and mental health workers who restrained patient during an attack had notice of the clearly established constitutional duty). **(HN31)** |
|  | **Discussion:**  | **Court:** 6th Cir. Tenn. | **Date:** Oct. 21, 2013 | **Headnotes:**: HN31 |
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| 118. | [**United States v. Schmidlin**](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:8390-25R1-652R-40W4-00000-00), 441 Fed. Appx. 338, 2011 U.S. App. LEXIS 19779, 2011 FED App. 692N (6th Cir.), 2011 FED App. 0692N (6th Cir.)  |
|  |  **Cited by:** 441 Fed. Appx. 338 p.342... (unpublished opinion) ("There is no authority for the proposition that failure to ask the jury to return a special verdict constitutes reversible error."). Moreover, the merit of Schmidlin's argument is especially dubious because he never requested that the district court submit a special-verdict form to the jury. See **Davis v. Rennie,264 F.3d 86, 106-07(1st Cir. 2001)** (questioning the defendant's right to object to the lack of a special-verdict form where the defendant did not make such ... |
|  | **Discussion:**  | **Court:** 6th Cir. Ohio | **Date:** Sept. 28, 2011 | **Headnotes:**: HN17 |
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| 119. | [**West v. Media Gen. Operations, Inc.**](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4FCS-YYS0-TVRV-B2RD-00000-00), 120 Fed. Appx. 601, 2005 U.S. App. LEXIS 1586, 33 Media L. Rep. (BNA) 1321  |
|  |  **Cited by:** 120 Fed. Appx. 601 p.622... Other courts have questioned whether a general verdict should be reversed for an invalid claim when the defendant does not object to a general verdict form or does not request special verdict form or interrogatories. See, e.g., **Davis v. Rennie, 264 F.3d 86(1st Cir. 2001)** . Because Defendant in this case objected to the use of the general verdict form at trial, we need not decide any "waiver" issues at this time. we will reverse only if our independent review of the evidence reveals that one ... |
|  | **Discussion:**  | **Court:** 6th Cir. Tenn. | **Date:** Jan. 31, 2005 | **Headnotes:**: HN17 |
| **6th Circuit - U.S. District Courts** |
| 120. | [**Davis v. Beck**](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:52HB-NCH1-652J-F10W-00000-00), 2011 U.S. Dist. LEXIS 35436  |
|  |  **Cited by:** ... "A police officer has a duty to act when he sees another officer using excessive force against an arrestee or pretrial detainee if the officer could realistically prevent that force and had sufficient time to do so." Kepley v. Lantz , 2007 U.S. Dist. LEXIS 51944 , 2007 WL 2085401 , at \* 6 (N.D. Ohio) (citing **Davis v. Rennie, 264 F.3d 86, 114(1st Cir. 2001))** . There must therefore be an underlying valid claim of excessive force claim for there to be a failure to intervene claim. Although ... |
|  | **Discussion:**  | **Court:** Northern Dist. Ohio | **Date:** Mar. 10, 2011 | **Headnotes:**: HN30, HN31 |
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| 121. | [**Kepley v. Lantz**](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4P78-3G10-TXFR-K1W8-00000-00), 2007 U.S. Dist. LEXIS 51944  |
|  |  **Cited by:** ... It is well-settled that "a police officer has a duty to act when he sees another officer using excessive force against an arrestee or pretrial detainee if the officer could realistically prevent that force and had sufficient time to do so." **Davis v. Rennie,264 F.3d 86, 114(1st Cir. 2001)** (citing Bruner v. Dunaway, 684 F.2d 422 , 426 (6th Cir. 1982) (per curiam)). In both Davis and Smith, plaintiffs provided evidence that the individual defendant officers were present during an ... |
|  | **Discussion:**  | **Court:** Northern Dist. Ohio | **Date:** July 18, 2007 | **Headnotes:**: HN30, HN31 |
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| 122. | [**West v. Media Gen. Operations, Inc.**](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:48P6-9PX0-0038-Y0D4-00000-00), 250 F. Supp. 2d 923, 2002 U.S. Dist. LEXIS 26334  |
|  |  **Distinguished by:** 250 F. Supp. 2d 923 p.937Defendant seeks to apply the principle that a general jury verdict usually will be vacated if one of several claims is erroneously submitted to the jury and the reviewing court cannot determine whether the general verdict is based, in whole or in part, on the erroneously submitted claim. The rationale is that it is impossible to know for certain that the invalid claim was not the sole basis for the general verdict. See Sunkist Growers, Inc. v. Winckler & Smith Citrus Products Co., 370 U.S. 19, 29-30, 8 L. Ed. 2d 305, 82 S. Ct. 1130 (1962); United New York & New Jersey Sandy Hook Pilots Ass'n v. Halecki, 358 U.S. 613, 619, 3 L. Ed. 2d 541, 79 S. Ct. 517 (1959); Davis v. Rennie, 264 F.3d 86, 105 (1st Cir. 2001); Levinsky's v. Wal-Mart Stores, Inc., 127 F.3d 122, 134-36 (1st Cir. 1997); Lattimore v. Polaroid Corp., 99 F.3d 456, 468 (1st Cir. 1996); Anixeter v. Home-Stake Production, 77 F.3d 1215, 1229-31 (10th Cir. 1996); Brandenburg v. Cureton, 882 F.2d 211, 214 (6th Cir. 1989); Carden v. Westinghouse Elec. Corp., 850 F.2d 996, 1000-1001 (3rd Cir. 1988); Katara v. D.E. Jones Commodities, Inc., 835 F.2d 966, 971 (2nd Cir. 1987); Bone v. Refco, Inc., 774 F.2d 235, 242-43 (8th Cir. 1985); Doherty, 728 F.2d at 344; Ely v. Blevins, 706 F.2d 479, 480 (4th Cir. 1983). **(HN16)** |
|  | **Discussion:**  | **Court:** Eastern Dist. Tenn. | **Date:** Mar. 14, 2002 | **Headnotes:**: HN16 |
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| 123. | [**Adams v. Berger Chevrolet, Inc.**](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:445S-YB80-0038-Y3T5-00000-00), 2001 U.S. Dist. LEXIS 16015  |
|  |  **Cited by:** ... Our holdings that a recidivist may be punished more severely than a first offender recognize that repeated misconduct is more reprehensible than an individual instance of malfeasance. Id. at 576-77 (citations omitted). See also Zimmerman v. Direct Federal Credit Union , 262 F.3d 70 , 2001 W.L. 991486 **(1st Cir. 2001)** ; **Davis v. Rennie, 264 F.3d 86, 2001 U.S. App. LEXIS 19663, 2001 W.L. 1002632(1st Cir. 2001)** . Consumer Protection, Fair Credit Reporting Remedies, Damages Damages, ... |
|  | **Court:** Western Dist. Mich. | **Date:** Sept. 26, 2001 |
| **7th Circuit - Court of Appeals** |
| 124. | [**Mitchell v. Krueger**](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5DK9-FBT1-F04K-R0WV-00000-00), 594 Fed. Appx. 874, 2014 U.S. App. LEXIS 21429  |
|  |  **Followed by:** 594 Fed. Appx. 874 p.877Moreover, Mitchell was restrained with his hands behind his back, flanked on either side by the defendants holding his arms, at least one of whom was more than 100 pounds heavier and half a foot taller than Mitchell. See Hope v. Pelzer, 536 U.S. 730, 738, 122 S. Ct. 2508, 153 L. Ed. 2d 666 (2002) (reasoning that shackling inmate to hitching post was "obvious" Eighth Amendment violation if, as inmate alleged, his threat to guards' safety had abated after he was subdued, handcuffed, and placed in leg irons).  ... A jury reasonably could find that Mitchell was not a threat to anyone—and wasn't perceived by the defendants to be a threat to anyone—when Cicha allegedly twisted his wrist for no reason except to cause him pain. Likewise, if Cicha did twist Mitchell's wrist for no reason, then he also knew that Mitchell did not pose a new threat simply because he predictably reacted to the pain. See Hendrickson v. Cooper, 589 F.3d 887, 889-91, 894-95 (7th Cir. 2009) (upholding jury's finding that guard had used excessive force by provoking inmate and citing his reaction as excuse to attack him); Morton v. City of East Chicago, 349 F.3d 989, 1004-05 (7th Cir. 2003) (vacating grant of summary judgment for defendant police officers on excessive-force claim under Fourth Amendment since jury reasonably could find that plaintiff resisted only after officers had grabbed and shoved him to floor); Davis v. Rennie, 264 F.3d 86, 95-96, 115 (1st Cir. 2001) (upholding award of punitive damages because jury could find that state employee of mental-health hospital had acted with "evil motive" by taunting an involuntarily committed patient to provoke behavior which employee used as excuse to justify applying unreasonable force).  **(HN7,HN12,HN18,HN30,HN31)** |
|  | **Discussion:**  | **Court:** 7th Cir. Wis. | **Date:** Nov. 12, 2014 | **Headnotes:**: HN7, HN12, HN18, HN30, HN31 |
| **7th Circuit - U.S. District Courts** |
| 125. | [**Brissette v. McCulloch**](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5B35-1YN1-F04F-K28N-00000-00), 2013 U.S. Dist. LEXIS 178218  |
|  |  **Cited by:** ... " may be held liable for their failure to act if it result in a constitutional violation 164 Estelle v. Gamble, 429 U.S. 97 , 106 , 97 S. Ct. 285 , 50 L. Ed. 2d 251 (1976) (medical care claims may be based on "acts or omissions"); **Davis v. Rennie,264 F.3d 86, 114(1st Cir. 2001)** ; Alexander v. Perrill, 916 F.2d 1392 , 1395 (9th Cir. 1990) (prison officials "can't just sit on your duff and not do anything" to prevent violations of rights); Lewis v. Mitchell, 416 F.Supp.2d 935 ... |
|  | **Discussion:**  | **Court:** Western Dist. Wis. | **Date:** Dec. 18, 2013 | **Headnotes:**: HN4 |
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| 126. | [**BP Amoco Chem. Co. v. Flint Hills Res., LLC**](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:7Y3G-5480-YB0N-30BY-00000-00), 697 F. Supp. 2d 1001, 2010 U.S. Dist. LEXIS 28477  |
|  |  **Followed by:** 697 F. Supp. 2d 1001 p.1017The same analysis applies where multiple claims are involved in a case. See Lawndale Nat'l Bank v. American Cas. Co., 489 F.2d 1384, 1389 (7th Cir. 1973) (distinguishing general verdicts with multiple theories of defense and multiple theories of liability).  ... Other courts have reached similar results. See, e.g., Davis v. Rennie, 264 F.3d 86, 105-07 (1st Cir. 2001) (adopting a harmless error approach and reversing general verdict only where it is "reasonably certain that the jury was not significantly influenced by issues erroneously admitted to it." (citations omitted)). **(HN16,HN17)** |
|  | **Discussion:**  | **Court:** Northern Dist. Ill. | **Date:** Mar. 25, 2010 | **Headnotes:**: HN16, HN17 |
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| 127. | [**Ibanez v. Velasco**](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:45PC-SFK0-0038-Y32H-00000-00), 2002 U.S. Dist. LEXIS 7364  |
|  |  **Cited by:** ... The jury found that it was the defendants who had lied. The jurors had to conclude that the defendants were utterly without remorse for their outrageous misconduct and the injuries they had caused. This is a factor that weighs heavily in support of a large punitive damages award. See **Davis v. Rennie, 264 F.3d 86, 115-16(1st Cir. 2001)** (citing Hall v. Ochs , 817 F.2d 920 , 927-28 (1st Cir. 1987) (punitive damages award justified not only by defendants' initial conduct, but also ... |
|  | **Discussion:**  | **Court:** Northern Dist. Ill. | **Date:** Apr. 23, 2002 | **Headnotes:**: HN34 |
| **8th Circuit - Court of Appeals** |
| 128. | [**Friedman & Friedman v. Tim McCandless**](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:7YJ8-V0P1-2RHS-X01T-00000-00), 606 F.3d 494, 2010 U.S. App. LEXIS 10550, 72 U.C.C. Rep. Serv. 2d (CBC) 204  |
|  |  **Cited in Dissenting Opinion at:** 606 F.3d 494 p.505 **Cited by:** 606 F.3d 494 p.501... to determine what damages the jury awarded for fraudulent misrepresentation, as opposed to the reversed liability for breach of contract, necessitates a new trial on both claims. 4 The dissent suggests that McCandless failed to preserve this error, citing a First Circuit case which we point out refused to adopt a waiver rule. **Davis v. Rennie, 264 F.3d 86, 107(1st Cir. 2001)** . Jury Trials, Verdicts Reviewability of Lower Court Decisions, Preservation for Review HN14 In the Eighth Circuit ... |
|  | **Discussion:**  | **Court:** 8th Cir. Iowa | **Date:** May 25, 2010 | **Headnotes:**: HN17 |
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| 129. | [**Serna v. Goodno**](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4WFC-45D0-TXFX-B2G7-00000-00), 567 F.3d 944, 2009 U.S. App. LEXIS 11767  |
|  |  **Cited by:** 567 F.3d 944 p.948... institutional interest in the safety and security of guards and other individuals in the facility, order within the facility, and the efficiency of the facility's operations." Id . Other circuits have relied upon Andrews in considering constitutional claims raised by involuntarily committed individuals. See, e.g., Hydrick v. Hunter , 500 F.3d 978 , 997-98 (9th Cir. 2007) ; **Davis v. Rennie, 264 F.3d 86, 102, 108(1st Cir. 2001)** . But see Aiken v. Nixon , 236 F. Supp. 2d 211 , ... |
|  | **Discussion:**  | **Court:** 8th Cir. Minn. | **Date:** June 3, 2009 | **Headnotes:**: HN4, HN5 |
| **8th Circuit - U.S. District Courts** |
| 130. | [**Arnzen v. Palmer**](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:55D6-N3S1-F04D-501J-00000-00), 2012 U.S. Dist. LEXIS 51928  |
|  |  **Cited by:** ... housing of pretrial detainees, such as the legitimate institutional interest in the safety and security of guards and other individuals in the facility, order within the facility, and the efficiency of the facility's operations." Id. Other circuits have relied upon Andrews in considering constitutional claims raised by involuntarily committed individuals. See, e.g., Hydrick v. Hunter , 500 F.3d 978 , 997-98 (9th Cir. 2007) ; **Davis v. Rennie, 264 F.3d 86, 102, 108(1st Cir. 2001)** ... |
|  | **Discussion:**  | **Court:** Northern Dist. Iowa | **Date:** Apr. 12, 2012 | **Headnotes:**: HN4, HN5 |
| **9th Circuit - U.S. District Courts** |
| 131. | [**Percelle v. Pearson**](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5N39-6TP1-F04C-T0HR-00000-00), 2017 U.S. Dist. LEXIS 36450  |
|  |  **Cited by:** ... Smith v. City of Oakland , 538 F. Supp. 2d 1217 (N.D. Cal. 2008) , aff'd 379 Fed. Appx. 647 (9th Cir. 2009) (unlawful incarceration and eviction; economic and non-economic damages of $5,000,000 remitted to $3,000,000, punitives of $100,000); **Davis v. Rennie, 264 F.3d 86(1st Cir. 2001)** (mentally ill patient suffering injuries—$100,000 general damages; punitives $500,000 each of two defendants and $250,000 third defendant); Knapps v. City of Oakland , 647 F. Supp. 2d 1129 , 1171 (N.D. ... |
|  | **Court:** Northern Dist. Cal. | **Date:** Mar. 14, 2017 | **Headnotes:**: HN38 |
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| 132. | [**Smith v. City of Oakland**](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:83JT-MVJ1-652H-72VR-00000-00), 2011 U.S. Dist. LEXIS 127393  |
|  |  **Cited by:** ... (unlawful incarceration and eviction; economic and non-economic damages for incarcerated plaintiff of $5,000,000 remitted to $3,000,000, punitives of $100,000); Estate of Moreland v. Dieter , 395 F.3d 747 (7th Cir.2005) (injuries resulting in death - $29 milllion general damages; punitives per defendant of $15 million and $12.5 million); **Davis v. Rennie, 264 F. 3d 86(1st Cir.2001)** (mental patient suffering serious injuries - $100,000 general damages; punitives $500,000 each of 2 defendants ... |
|  | **Discussion:**  | **Court:** Northern Dist. Cal. | **Date:** Nov. 3, 2011 | **Headnotes:**: HN12, HN18 |
| **11th Circuit - U.S. District Courts** |
| 133. | [**Bivins v. Wrap It Up, Inc.**](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4PXW-BVH0-TXFP-K2DP-00000-00), 2007 U.S. Dist. LEXIS 77670  |
|  |  **Followed by:** To be entitled to punitive damages, a plaintiff must demonstrate that the defendants acted with knowledge that their actions may have violated federal law. Kolstad v. American Dental Association, 527 U.S. 526, 119 S. Ct. 2118, 144 L. Ed. 2d 494 (1999).  ... The defendants not be aware that they are engaging in discrimination; instead, they need only act "in the face of a perceived risk that its actions will violate federal law." Id. at 536. A plaintiff may also "establish that the defendant acted with reckless disregard for his federally protected rights by showing that the defendant's employees lied, either to the plaintiff or to the jury, in order to cover up their discriminatory actions." Bruso v. United Airlines, Inc., 239 F.3d 848, 858 (7th Cir. 2001); see also EEOC v. Wal-Mart Stores, Inc., 35 Fed. Appx. 543 (9th Cir. 2002) (finding that, because it was relevant to a determination of punitive damages, the district court abused its discretion by excluding evidence that Wal-Mart attempted to cover up its discriminatory conduct after the relevant incident); Davis v. Rennie, 264 F.3d 86 (1st Cir. 2001) (stating that defendants' actions subsequent to the date in question may justify an award of punitive damages). **(HN35)** |
|  | **Discussion:**  | **Court:** Southern Dist. Fla. | **Date:** Oct. 18, 2007 | **Headnotes:**: HN35 |
| **Florida District Court of Appeals** |
| 134. | [**GMC v. McGee**](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:47HC-4X30-0039-41PJ-00000-00), 837 So. 2d 1010, 2002 Fla. App. LEXIS 19052, 28 Fla. L. Weekly D 34, CCH Prod. Liab. Rep. P16477  |
|  |  **Cited by:** 837 So. 2d 1010 p.1035... In the related context of Title VII litigation, a plaintiff may "establish that the defendant acted with reckless disregard for his federally protected rights by showing that the defendant's employees lied, either to the plaintiff or to the jury, in order to cover up their discriminatory actions." Bruso v. United Airlines, Inc. , 239 F.3d 848 , 858 (7th Cir. 2001) ; see also **Davis v. Rennie, 264 F.3d 86, 115(1st Cir. 2001)** (where court observed that "a punitive damages award may be ... |
|  | **Discussion:**  | **Court:** Fla. Dist. Ct. App. 4th Dist. | **Date:** Dec. 18, 2002 | **Headnotes:**: HN34 |
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| 135. | [**St. John v. Coisman**](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:44FN-WWW0-0039-42VT-00000-00), 799 So. 2d 1110, 2001 Fla. App. LEXIS 16277, 26 Fla. L. Weekly D 2746  |
|  |  **Cited in Dissenting Opinion at:** 799 So. 2d 1110 p.1121... In my view, the second factor specifically refers to the relationship between the amount of compensatory and punitive damages which is a necessary element that the appellate courts must consider. I am not alone in this belief. See **Davis v. Rennie, 264 F.3d 86, 116(1st Cir. 2001)** (holding that the second Cooper criteria - the disparity between the suffered and the punitive damages award - was satisfied because "the punitive damages award was reasonable in comparison to the compensatory ... |
|  | **Discussion:**  | **Court:** Fla. Dist. Ct. App. 5th Dist. | **Date:** Nov. 16, 2001 | **Headnotes:**: HN37, HN38 |
| **Maine Supreme Judicial Court** |
| 136. | [**Clifford v. MaineGeneral Med. Ctr.**](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5C1S-7BH1-F04G-W001-00000-00), 2014 ME 60, 91 A.3d 567, 2014 Me. LEXIS 67  |
|  |  **Followed by:**  If law enforcement officers, pre-2008, violated the Fourth Amendment if they strip searched arrestees absent at least a reasonable suspicion of wrongdoing, then it would have been apparent to a reasonable person in Kemmerer's position that medical practitioners were not permitted to strip search patients, particularly a female patient with threatened assistance from male nonmedical staff, without cause. Cf. Davis v. Rennie, 264 F.3d 86, 114-15 (1st Cir. 2001) (concluding, in analyzing a qualified immunity defense, that cases establishing a particular duty, in that case a duty to intervene, on police and correctional officers, were sufficient to put mental hospital staff at a state institution on notice of "at least the same duty," noting that "involuntarily committed patients are entitled to greater protection than those 'whose conditions of confinement are designed to punish'" (quoting Youngberg v. Romeo, 457 U.S. 307, 321-22, 102 S. Ct. 2452, 73 L. Ed. 2d 28 (1982)). **(HN6)** |
|  | **Discussion:**  | **Court:** Me. | **Date:** Apr. 22, 2014 | **Headnotes:**: HN6 |
| **Massachusetts Appeals Court** |
| 137. | [**Cormier v. City of Lynn**](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5MKY-H3V1-F15C-B07W-00000-00), 91 Mass. App. Ct. 1101, 2017 Mass. App. Unpub. LEXIS 46, 75 N.E.3d 1148  |
|  |  **Cited by:** 91 Mass. App. Ct. 1101 p.1101; 75 N.E.3d 1148 p.1148... Although, in certain limited circumstances, State inaction may give rise to liability, that liability generally involves situations where the State has mandated confinement and, therefore, owes the individual a duty of protection. See **Davisv.Rennie, 264 F.3d 86, 97-98(1st Cir. 2001)** ("The [S]tate has a duty to protect incarcerated prisoners and involuntarily committed mental patients from harm by a state actor"). Massachusetts has been unwilling to extend to school children this ... |
|  | **Discussion:**  | **Court:** Mass. App. Ct. | **Date:** Jan. 12, 2017 | **Headnotes:**: HN4 |
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| 138. | [**Ciccarelli v. Sch. Dep't**](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4R9F-YW50-TX4N-G1CP-00000-00), 70 Mass. App. Ct. 787, 877 N.E.2d 609, 2007 Mass. App. LEXIS 1289, 102 Fair Empl. Prac. Cas. (BNA) 658  |
|  |  **Followed by:** 70 Mass. App. Ct. 787 p.797; 877 N.E.2d 609 p.618Flanagan's testimony that she did not know about Ciccarelli's agreement to testify until her own deposition in 2002 was contradicted by the letter to her dated August 13, 1997, from Ciccarelli's attorney, and her presence at defense counsel's table when Ciccarelli testified at Kealy's MCAD hearing on September 10, 1997. Therefore, the jury could have interpreted Flanagan's testimony as false and designed to cover up her actions in both matters. "[A] punitive damages award may be 'justified not only by defendant's actions on [the date in question] but also by their subsequent behavior.'" Davis v. Rennie, 264 F.3d 86, 115 (1st Cir. 2001), cert. denied, 535 U.S. 1053, 122 S. Ct. 1909, 152 L. Ed. 2d 820 (2002), quoting from Hall v. Ochs, 817 F.2d 920, 927 (1st Cir. 1987). See Hall, 817 F.2d at 928 ("a factfinder might infer that the stark clash [of evidence at trial] could not have resulted from innocent misrecollection and that its intentional quality intensified any need the jury may have found for punishment and deterrence"). **(HN34)** |
|  | **Discussion:**  | **Court:** Mass. App. Ct. | **Date:** Dec. 7, 2007 | **Headnotes:**: HN34 |
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| 139. | [**Atkinson v. Nat'l Boston Video Ctr., Inc.**](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5DJM-0TB1-JCNF-D50W-00000-00), 2007 Mass. App. Unpub. LEXIS 522  |
|  |  **Followed by:** ... ("a factfinder might infer that the stark clash [of testimony from competing witnesses] could not have resulted from innocent misrecollection, and that its intentional quality intensified any need the jury may have found for punishment and deterrence" [emphasis omitted]); **Davisv.Rennie, 264 F.3d 86, 115-116(1st Cir. 2001)** (evidence that defendants attempted to "cover up" wrongdoing supported award of punitive damages). See also Dalis **v.** Buyer Advertising. Inc ., 418 Mass. 220 , ... |
|  | **Discussion:**  | **Court:** Mass. App. Ct. | **Date:** June 13, 2007 |
| **Montana Supreme Court** |
| 140. | [**Sunburst Sch. Dist. No. 2 v. Texaco, Inc.**](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4PCB-2550-TXFT-X397-00000-00), 2007 MT 183, 338 Mont. 259, 165 P.3d 1079, 2007 Mont. LEXIS 358  |
|  |  **Cited by:** 2007 MT 183 p.66; 338 Mont. 259 p.280; 165 P.3d 1079 p.1093... Courts uphold a general verdict where substantial evidence supports any ground of recovery "in the absence of a pertinent objection to the charge or a request for a specific interrogatory." Union Pacific Railroad Company v. Lumbert , 401 F.2d 699 , 701 (10th Cir. 1968) ; see also **Davis v. Rennie,264 F.3d 86, 106(1st Cir. 2001)** ; Kossman v. Northeast Illinois Regional Commuter R.R ., 211 F.3d 1031 (7th Cir. 2000) ; McCord v. Maguire , 873 F.2d 1271 (9th Cir. 1989) . Texaco asked ... |
|  | **Discussion:**  | **Court:** Mont. | **Date:** Aug. 6, 2007 | **Headnotes:**: HN17 |
| **Wisconsin Supreme Court** |
| 141. | [**Shaw v. Leatherberry**](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4HRF-NN80-0039-42BY-00000-00), 2005 WI 163, 286 Wis. 2d 380, 706 N.W.2d 299, 2005 Wisc. LEXIS 949  |
|  |  **Cited by:** 286 Wis. 2d 380 p.394; 706 N.W.2d 299 p.307... Plaintiff claims that Defendant used excessive force against him. To succeed on this claim, Plaintiff must prove each of the following things by a preponderance of the evidence: . . . ." Fed. Civ. Jury Instructions of the 7th Cir. § 7.08 (2005). Indeed, even looking beyond the Seventh Circuit, we have found many federal appellate decisions that utilize an ordinary civil burden of proof in § 1983 excessive force cases. 8 See, e.g. , **Davis v. Rennie, 264 F.3d 86, 105(1st Cir. 2001)** ... |
|  | **Discussion:**  | **Court:** Wis. | **Date:** Dec. 6, 2005 | **Headnotes:**: HN12 |

**Other Citing Sources: (76)**

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| --- |
| **Other Citations** |
| 1. | [**REGULAR FEATURES: Recent Developments in Health Law: American Journal of Law & Medicine and Harvard Law & Health Care Society: Constitutional Law: Use of Force by Mental Health Workers Violated Due Process**](https://advance.lexis.com/api/document?collection=analytical-materials&id=urn:contentItem:45M1-9360-0022-11XH-00000-00), 30 J.L. Med. & Ethics 114  |
|  | ... REGULAR FEATURES: Recent Developments in Health Law: American Journal of Law & Medicine and Harvard Law & Health Care Society : Constitutional Law: Use of Force by Mental Health Workers Violated Due Process Kris Erickson 30 J.L. Med. & Ethics 114 In **Davis v. Rennie ,** 1 **Davis v. Rennie,264 F.3d 86(1st Cir. 2001).** the U.S. Court of Appeals for the First Circuit affirmed the Massachusetts District Court's judgment that an involuntarily committed mental patient's rights were violated when ... |
|  | **Content:** Other Citations | **Date:** 2002 |
| **Annotated Statutes** |
| 2. | **Mass. Ann. Laws ch. 12 sec. 11I** |
|  | ... 22 Mass. L. Rep. 242 , 2007 Mass. Super. LEXIS 69 . Mental health worker was not protected by qualified immunity in action alleging violation of ALM GL c 12, § 11I brought by involuntarily committed mental patient. **Davis v. Rennie (1st Cir. Mass. Sept. 5, 2001),264 F.3d 86, 2001 U.S. App. LEXIS 19663** , cert. denied, (U.S. May 13, 2002), 535 U.S. 1053 , 122 S. Ct. 1909 , 152 L. Ed. 2d 820 , 2002 U.S. LEXIS 3235 . Municipality was qualifiedly immune from liability under Massachusetts ... |
|  | **Content:** Statutes |
| **Law Reviews and Periodicals** |
| 3. | [**ARTICLE: GUIDE FOR USERS: VI. PRISONERS' RIGHTS**](https://advance.lexis.com/api/document?collection=analytical-materials&id=urn:contentItem:5P97-DSN0-02C9-N02P-00000-00), 46 Geo. L.J. Ann. Rev. Crim. Proc. 1107  |
|  | ... Davis v. D.C., 158 F.3d 1342, 1349 (D.C. Cir. 1998) (claim for compensatory damages for prisoner's weight loss, appetite loss, and insomnia barred because prisoner alleged "somatic manifestations of emotional distress," not physical injury). But see, e.g. , **Davis v. Rennie, 264 F.3d 86, 115 (1st Cir. 2001)** ( § 1997e(e) did not bar claim for punitive damages because there was sufficient evidence of evil motive); Thompson v. Carter, 284 F.3d 411, 419 (2d Cir. 2002) ( § 1997e(e) did not bar claim ... |
|  | **Content:** Law Reviews | **Date:** 2017 |
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| 4. | [**GUIDE FOR USER: VI. PRISONERS'RIGHTS**](https://advance.lexis.com/api/document?collection=analytical-materials&id=urn:contentItem:5K7G-4NM0-02C9-N02D-00000-00), 45 Geo. L.J. Ann. Rev. Crim. Proc. 1105  |
|  | ... (D.C. Cir. 1998) (§ 1983 claim barred because plaintiff's weight loss, appetite loss, and insomnia did not fulfill physical injury requirement because they were merely "somatic manifestations of emotional distress"). But see, e.g. , **Davis v. Rennie,264 F.3d 86, 115(1st Cir. 2001)** (§ 1997e(e) did not bar claim where there was sufficient evidence of "evil motive" to support punitive damages); Thompson v. Carter, 284 F.3d 411 , 419 (2d Cir. 2002) (§ 1997e(e) did not bar inmate's request ... |
|  | **Content:** Law Reviews | **Date:** 2016 |
|  |  |
| 5. | [**VI. PRISONERS' RIGHTS**](https://advance.lexis.com/api/document?collection=analytical-materials&id=urn:contentItem:59PW-K5G0-02C9-N01H-00000-00), 42 Geo. L.J. Ann. Rev. Crim. Proc. 1043  |
|  | ... Davis v. D.C., 158 F.3d 1342, 1349 (D.C. Cir. 1998) (§ 1983 claim barred because plaintiff's weight loss, appetite loss, and insomnia did not fulfill physical injury requirement because they were merely "somatic manifestations of emotional distress"). But see, e.g. , **Davis v. Rennie, 264 F.3d 86, 115 (1st Cir. 2001)** (§ 1997e(e) did not bar claim where sufficient evidence of "evil motive" to support punitive damages); Thompson v. Carter, 284 F.3d 411, 419 (2d Cir. 2002) (§ 1997e(e) did not ... |
|  | **Content:** Law Reviews | **Date:** 2013 |
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| 6. | [**VI. PRISONERS' RIGHTS**](https://advance.lexis.com/api/document?collection=analytical-materials&id=urn:contentItem:58G8-R5Y0-02C9-N016-00000-00), 41 Geo. L.J. Ann. Rev. Crim. Proc. 1023  |
|  | ... Davis v. D.C., 158 F.3d 1342, 1349 (D.C. Cir. 1998) (§ 1983 claim barred because plaintiff's weight loss, appetite loss, and insomnia do not fulfill physical injury requirement because they are merely "somatic manifestations of emotional distress"). But see, e.g. , **Davis v. Rennie, 264 F.3d 86, 115 (1st Cir. 2001)** (§ 1997e(e) did not bar claim where there was sufficient evidence of "evil motive" to support punitive damages); Thompson v. Carter, 284 F.3d 411, 419 (2d Cir. 2002) (§ 1997e(e) ... |
|  | **Content:** Law Reviews | **Date:** 2012 |
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| 7. | [**VI. PRISONERS' RIGHTS**](https://advance.lexis.com/api/document?collection=analytical-materials&id=urn:contentItem:5609-MRP0-02C9-N00V-00000-00), 40 Geo. L.J. Ann. Rev. Crim. Proc. 1007  |
|  | ... Davis v. D.C., 158 F.3d 1342, 1349 (D.C. Cir. 1998) (§ 1983 claim barred because plaintiff's weight loss, appetite loss, and insomnia do not fulfill physical injury requirement because they are merely "somatic manifestations of emotional distress"). But see, e.g. , **Davis v. Rennie, 264 F.3d 86, 115 (1st Cir. 2001)** (§ 1997e(e) did not bar claim where there was sufficient evidence of "evil motive" to support punitive damages); Thompson v. Carter, 284 F.3d 411, 419 (2d Cir. 2002) (§ 1997e(e) ... |
|  | **Content:** Law Reviews | **Date:** 2011 |
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| 8. | [**VI. PRISONERS' RIGHTS**](https://advance.lexis.com/api/document?collection=analytical-materials&id=urn:contentItem:5603-7B40-02C9-N00H-00000-00), 39 Geo. L.J. Ann. Rev. Crim. Proc. 993  |
|  | ... Davis v. D.C., 158 F.3d 1342, 1349 (D.C. Cir. 1998) (§ 1983 claim barred because plaintiff's weight loss, appetite loss, and insomnia do not fulfill physical injury requirement because they are merely "somatic manifestations of emotional distress"). But see, e.g. , **Davis v. Rennie, 264 F.3d 86, 115 (1st Cir. 2001)** (§ 1997e(e) did not bar claim where there was sufficient evidence of "evil motive" to support punitive damages); Thompson v. Carter, 284 F.3d 411, 419 (2d Cir. 2002) (§ 1997e(e) ... |
|  | **Content:** Law Reviews | **Date:** 2010 |
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| 9. | [**GUIDE FOR USERS**](https://advance.lexis.com/api/document?collection=analytical-materials&id=urn:contentItem:4XDM-0JG0-02C9-N007-00000-00), 38 Geo. L.J. Ann. Rev. Crim. Proc. 967  |
|  | ... Davis v. D.C., 158 F.3d 1342, 1349 (D.C. Cir. 1998) (§ 1983 claim barred because plaintiff's weight loss, appetite loss, and insomnia do not fulfill physical injury requirement because they are merely "somatic manifestations of emotional distress"). But see, e.g ., **Davis v. Rennie, 264 F.3d 86, 115 (1st Cir. 2001)** (§ 1997e(e) did not bar claim where there was sufficient evidence of "evil motive to support punitive damages); Thompson v. Carter, 284 F.3d 411, 419 (2d Cir. 2002) (§ 1997e(e) did ... |
|  | **Content:** Law Reviews | **Date:** 2009 |
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| 10. | [**ARTICLE: PROSECUTION OF PROCESS CRIMES: THOUGHTS AND TRENDS**](https://advance.lexis.com/api/document?collection=analytical-materials&id=urn:contentItem:4T5B-VTR0-02C9-N00K-00000-00), 37 Geo. L.J. Ann. Rev. Crim. Proc. 943  |
|  | ... Davis v. D.C., 158 F.3d 1342, 1349 (D.C. Cir. 1998) (claim barred because plaintiff's weight loss, appetite loss, and insomnia do not fulfill physical injury requirement because they are merely "somatic manifestations of emotional distress"). But see, e.g. , **Davis v. Rennie, 264 F.3d 86, 115 (1st Cir. 2001)** (§ 1997e(e) did not bar claim where there was sufficient evidence of "evil motive" to support punitive damages); Thompson v. Carter, 284 F.3d 411, 419 (2d Cir. 2002) (§ 1997e(e) did not ... |
|  | **Content:** Law Reviews | **Date:** 2008 |
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| 11. | [**ARTICLE: VI. PRISONERS' RIGHTS**](https://advance.lexis.com/api/document?collection=analytical-materials&id=urn:contentItem:4P89-P9H0-02C9-N006-00000-00), 36 Geo. L.J. Ann. Rev. Crim. Proc. 947  |
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|  | **Content:** Law Reviews | **Date:** 2007 |
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| 12. | [**ARTICLE: VI. PRISONERS' RIGHTS**](https://advance.lexis.com/api/document?collection=analytical-materials&id=urn:contentItem:4M7T-DTB0-02C9-N001-00000-00), 35 Geo. L.J. Ann. Rev. Crim. Proc. 927  |
|  | ... (§ 1983 allows remedies for deprivations of federal rights); see also Paul v. Davis, 424 U.S. 693, 700-01 (1976) (state tort claim, not raising any federal law issues, was not cognizable under § 1983 because it implicated only state law); see, e.g., **Davis v. Rennie, 264 F.3d 86, 97-98 (1st Cir. 2001)** (cognizable § 1983 claim under substantive due process for failure to protect involuntarily committed mental patient from other state actors); Maxwell v. City of N.Y., 380 F.3d 106, 108 ... |
|  | **Content:** Law Reviews | **Date:** 2006 |
|  |  |
| 13. | [**ARTICLE: VI. PRISONERS' RIGHTS**](https://advance.lexis.com/api/document?collection=analytical-materials&id=urn:contentItem:4JCH-RH10-02C9-N002-00000-00), 34 Geo. L.J. Ann. Rev. Crim. Proc. 913  |
|  | ... 2974 See Albright v. Oliver, 510 U.S. 266 , 271 (1994) (plurality opinion) (citing Baker v. McCollan, 443 U.S. 137 , 144 n.3 (1979)); see, e.g., **Davis v. Rennie,264 F.3d 86, 97(1st Cir. 2001)** (§ 1983 is mechanism for vindicating federal rights elsewhere conferred and is not itself a source of substantive rights); Thomas v. Roach, 165 F.3d 137 , 142 (2d Cir. 1999) (same); Doe v. Delie, 257 F.3d 309 , 314 (3d Cir. 2001) ... |
|  | **Content:** Law Reviews | **Date:** 2005 |
|  |  |
| 14. | [**ARTICLE: VI. Prisoners' Rights**](https://advance.lexis.com/api/document?collection=analytical-materials&id=urn:contentItem:4G94-2YW0-0240-Y009-00000-00), 33 Geo. L.J. Ann. Rev. Crim. Proc. 873  |
|  | ... Section 1983 is not itself a source of substantive rights; rather, it is a means of vindicating federal rights established elsewhere. 2922 See Albright v. Oliver, 510 U.S. 266, 271 (1994) (plurality opinion) (citing Baker v. McCollan, 443 U.S. 137, 144 n.3 (1979)); see, e.g., **Davis v. Rennie, 264 F.3d 86, 97 (1st Cir. 2002)** (§ 1983 is mechanism for vindicating federal rights elsewhere conferred and is not itself a source of substantive rights); Thomas v. Roach, 165 F.3d 137, ... |
|  | **Content:** Law Reviews | **Date:** May 1, 2004 |
|  |  |
| 15. | [**ARTICLE: VI. Prisoners' Rights: Procedural Means of Enforcement under**](https://advance.lexis.com/api/document?collection=analytical-materials&id=urn:contentItem:4GHH-71B0-0240-Y01V-00000-00), 32 Geo. L.J. Ann. Rev. Crim. Proc. 929  |
|  | ... Monroe v. Pape, 365 U.S. 167, 184-87 (1961) (police officer considered state actor under § 1983 because he allegedly performed illegal search and seizure), overruled on other grounds, Monell v. Dep't. of Soc. Servs., 436 U.S. 658 (1978); see, e.g., **Davis v. Rennie, 264 F.3d 86, 98 n. 11 (1st Cir. 2002)** (state mental hospital employees acted under color of state law when they failed to prevent coworker from punching involuntarily committed patient in head while patient restrained); ... |
|  | **Content:** Law Reviews | **Date:** May 1, 2003 |
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| 16. | [**ARTICLE: WHEREFORE ART THOU ROMEO: REVITALIZING YOUNGBERG'S PROTECTION OF LIBERTY FOR THE CIVILLY COMMITTED**](https://advance.lexis.com/api/document?collection=analytical-materials&id=urn:contentItem:58HT-G6H0-00CV-70JC-00000-00), 54 B.C. L. Rev. 535  |
|  | ... Notably, the First Circuit had broadly proclaimed ten years earlier that a failure to protect patients from harm violates substantive due process under the Youngberg standard, even if the failure does not shock the conscience. 214 **Davis v. Rennie, 264 F.3d 86, 97-99 (1st Cir. 2001).** The First Circuit changed course in 2010, holding that, even if DeShaney's special relationship standard is met, plaintiffs must additionally establish that the official misconduct rose to a conscience-shocking ... |
|  | **Content:** Law Reviews | **Date:** Mar. 1, 2013 |
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| 17. | [**ARTICLE: FEDERAL JURY CHARGE PRACTICE: A GUIDE TO HANDLING JURY CHARGES IN FEDERAL COURTS**](https://advance.lexis.com/api/document?collection=analytical-materials&id=urn:contentItem:5BRK-H2T0-013W-X1C8-00000-00), 25 App. Advoc. 560  |
|  | ... Muth v. Ford Motor Co., 461 F.3d 557 , 564-65 (5th Cir. 2006). 3 See also, e.g., Tire Eng'g & Distrib., LLC v. Shangdong Linglong Rubber Co., 682 F.3d 292 , 313-14 (4th Cir. 2012) (applying harmless error analysis to general verdict on damages); **Davis v. Rennie,264 F.3d 86, 106(1st Cir. 2001)** (asking "whether we can be reasonably certain" that the jury's verdict did not rest on the erroneous basis); Travers v. Meshriy, 627 F.2d 934 , 938-39 (9th Cir. 1980) (four-factor ... |
|  | **Content:** Law Reviews | **Date:** 2013 |
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| 18. | 96 Geo. L.J. 943 |
|  |  |
|  | **Content:** Law Reviews |
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| 19. | [**NOTE: Courts Have the Final Say: Does the Doctrine of "Manifest Disregard" Promote Lawful Arbitral Awards or Disguise Unlawful Judicial Review?**](https://advance.lexis.com/api/document?collection=analytical-materials&id=urn:contentItem:4N9M-RCW0-00CT-W033-00000-00), 2006 J. Disp. Resol. 627  |
|  | ... Supreme Court 's rejection of a "simple mathematical formula" with approval. 73 The first circuit has noted "that the Supreme Court has 'dismissed any simple, mathematical formula in favor of general inquiry into reasonableness.'" **Davis v. Rennie, 264 F.3d 86, 117 (1st Cir. 2001)** (quoting Romano v. U-Haul Int'l, 223 F.3d 655, 673 (1st Cir. 2000)). Third: The constitutionally acceptable range is not reducible to a 'simple mathematical formula,' . . .Rather, the ratio of punitive damages ... |
|  | **Content:** Law Reviews | **Date:** 2006 |
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| 20. | [**Article: Outrageous and Irrational**](https://advance.lexis.com/api/document?collection=analytical-materials&id=urn:contentItem:5HM2-BDB0-00CW-81KK-00000-00), 100 Minn. L. Rev. 281  |
|  | ... (quoting Collins v. Harker Heights, 503 U.S. 115 , 129 (1992)). But the Court also insisted that a less deferential test of executive misconduct might apply "when actual deliberation is practical." 147 Id. at 851; see, e.g., **Davis v. Rennie,264 F.3d 86, 99-100(1st Cir. 2001)** (holding that the court did not err in declining to give a "shocks the conscience" jury instruction when mental patient was involuntarily committed and alleged officials failed to intervene when he was subjected ... |
|  | **Content:** Law Reviews | **Date:** Nov. 1, 2015 |
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| 21. | [**ARTICLE: Independent Protection and Advocacy: The Role of Counsel in Institutional Settings**](https://advance.lexis.com/api/document?collection=analytical-materials&id=urn:contentItem:4VK7-0820-00CV-20KD-00000-00), 53 N.Y.L. Sch. L. Rev. 55  |
|  | ... -12231 (2000), can be invoked to ensure equal access to the courts. and with referrals to a personal injury attorney if damages are sought. Davis v. Rennie is an example of a damages case that arose out of a restraint in a state psychiatric facility, Westboro State Hospital. 25 **264 F.3d 86(1st Cir. 2001).** It is one of the relatively few reported cases concerning this substantive area in Massachusetts and the case is instructive because it also addresses issues of supervisory liability. ... |
|  | **Content:** Law Reviews | **Date:** 2008 |
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| 22. | [**STUDENT WORK: TOWN OF CASTLE ROCK v. GONZALES: THE SUPREME COURT GOES TO GREAT LENGTHS TO ENSURE POLICE DISCRETION, BUT AT WHAT COST?**](https://advance.lexis.com/api/document?collection=analytical-materials&id=urn:contentItem:4R00-NXF0-00CV-V0CB-00000-00), 36 Stetson L. Rev. 881  |
|  | ... (finding that a police officer had a mandatory duty to render assistance to a man being assaulted by another man, because a special relationship existed when the officer arrived on the scene, observed the assault, and was requested to help by the victim); **Davis v. Rennie, 264 F.3d 86, 113-114 (1st Cir. 2001)** (discussing a state mandate requiring police officers to act when they observe another officer using excessive force). Unfortunately, the Court's strong desire to preserve police discretion ... |
|  | **Content:** Law Reviews | **Date:** 2007 |
|  |  |
| 23. | [**SELECTED EXCERPT: PRACTISING LAW INSTITUTE'S TWENTY-FOURTH ANNUAL SECTION 1983 CIVIL RIGHTS LITIGATION PROGRAM: Recent Developments in the Use of Excessive Force by Law Enforcement**](https://advance.lexis.com/api/document?collection=analytical-materials&id=urn:contentItem:4SDN-YDT0-00B1-90H1-00000-00), 24 Touro L. Rev. 569  |
|  | ... So if the use of force against a pretrial detainee is simply for the purpose of punishment, the force is not sanctioned by the Constitution. 34 Id. In addition to cases involving pretrial detainees, you have cases such as Davis v. Rennie 35 **264 F.3d 86(1st Cir. 2001).** and Andrews v. Neer, 36 253 F.3d 1052 (8th Cir. 2001). that involve involuntarily committed mental patients. These individuals are not convicted, they are not really even pretrial detainees, but are in the ... |
|  | **Content:** Law Reviews | **Date:** 2008 |
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| 24. | [**Comment: Toward a Uniform Rule: The Collapse of the Civil-Criminal Divide in Appellate Review of Multitheory General Verdicts**](https://advance.lexis.com/api/document?collection=analytical-materials&id=urn:contentItem:5CR9-DJK0-00CV-K0VH-00000-00), 81 U. Chi. L. Rev. 757  |
|  | ... Kellogg v Energy Safety Services Inc, 544 F3d 1121 , 1126 (10th Cir 2008). See also Allen v Wal-Mart Stores, Inc, 241 F3d 1293 , 1298 (10th Cir 2001). The First Circuit provides another example of inconsistency: in 2001 it adopted harmless error analysis, 123 **Davis v Rennie,264 F3d 86, 105-07(1st Cir 2001)** (applying harmless error analysis to affirm the verdict). but the following year reverted back to the Wilmington rule, 124 Kerkhof v MCI WorldCom, Inc, 282 F3d ... |
|  | **Content:** Law Reviews | **Date:** 2014 |
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| 25. | [**COMMENT: "Prisoners of the Mind"?: The Inappropriateness of Comparing the Involuntarily Committed Mentally Ill to Pretrial Detainees in Fourth Amendment Analyses**](https://advance.lexis.com/api/document?collection=analytical-materials&id=urn:contentItem:53RT-S2T0-02BM-Y14C-00000-00), 13 U. Pa. J. Const. L. 1435  |
|  | ... analysis should not turn on whether a search or seizure practice is so egregious as to be punitive. 107 See Andrews v. Neer, 253 F.3d 1052, 1060-61 (8th Cir. 2001). Rather, the right to be free from punishment requires civil detainees to receive more Fourth Amendment protection than in a criminal setting. 108 See **Davis v. Rennie, 264 F.3d 86, 99-100, 102 (1st Cir. 2001)** (rejecting the shocks the conscience standard in favor of a Fourth Amendment objective reasonableness standard ... |
|  | **Content:** Law Reviews | **Date:** June 1, 2011 |
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| 26. | [**NOTE: A Reasonable Search for Constitutional Protection in Serna v. Goodno: Involuntary Civil Commitment and the Fourth Amendment**](https://advance.lexis.com/api/document?collection=analytical-materials&id=urn:contentItem:51N2-6RN0-00CW-C098-00000-00), 44 U.C. Davis L. Rev. 363  |
|  | ... Andrews v. Neer, 253 F.3d 1052, 1061 (8th Cir. 2001) (concluding court would evaluate involuntarily civilly committed individual's excessive force claim under same standard it applied to pretrial detainees' excessive force claims); cf. **Davis v. Rennie, 264 F.3d 86, 108 (1st Cir. 2001)** (agreeing with Eighth Circuit that courts should evaluate involuntarily civilly committed individual's excessive force claim under objective reasonableness standard). The government's involuntary civil confinement ... |
|  | **Content:** Law Reviews | **Date:** Nov. 1, 2010 |
|  |  |
| 27. | [**ARTICLE: BIOLOGICAL ALTRUISM, SPLITTING SIBLINGS AND THE JUDICIAL PROCESS: A CHILD'S RIGHT TO CONSTITUTIONAL PROTECTION IN FAMILY DISLOCATION**](https://advance.lexis.com/api/document?collection=analytical-materials&id=urn:contentItem:4903-M9W0-00CV-P07W-00000-00), 71 UMKC L. Rev. 623  |
|  | ... Appeals for the First Circuit succinctly summarized the tests that substantive due process is the basis for a civil rights claim under U.S.C. § 1983: "Substantive due process protects individuals against state actions which are 'arbitrary and capricious,' or those which run counter to 'the concept of ordered liberty,' or those which, in context, appear shocking or violative of universal standards of decency." Id. (citations omitted). See also **Davis v. Rennie, 264 F.3d 86, 99-102 (1st Cir. 2001)** ... |
|  | **Content:** Law Reviews | **Date:** 2003 |
|  |  |
| 28. | [**The Washington and Lee Law Alumni Association Student Notes Colloquium: Joshua's Children: Constitutional Responsibility for Institutionalized Persons After DeShaney v. Winnebago County**](https://advance.lexis.com/api/document?collection=analytical-materials&id=urn:contentItem:58GJ-MV90-00CW-10BG-00000-00), 70 Wash & Lee L. Rev. 793  |
|  | ... In addition to being places of total constraint on liberty, which patients cannot leave at will, many institutions are places where use of force and threat of force is rampant and underreported, and where acts of violence that would be crimes in the outside world are covered up or characterized as "patient abuse." 20 See, e.g., **Davis v. Rennie, 264 F.3d 86, 93-96 (1st Cir. 2001),** cert. denied, 535 U.S. 1053 (2002) (reviewing trial testimony and jury verdict in favor of a patient beaten by ... |
|  | **Content:** Law Reviews | **Date:** 2013 |
| **Treatise Citations** |
| 29. | 2-4 Civil Rights Actions P 4.08 |
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|  | **Content:** Treatises |
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| 30. | **1-4.1 MA Pleading and Practice @ 4.1.8** |
|  | ... . Additionally, punitive damages of at least $5,000 are appropriate when the decedent’s death was caused by gross negligence or malicious, willful, wanton, or reckless conduct of the defendant. Id. Punitive damages may be justified not only by the defendant’s negligence causing the alleged injury, but by subsequent behavior. **Davis v. Rennie, 264 F.3d 86, 115–16(1st Cir. 2001)** (upholding a jury award of punitive damages based solely on the subsequent attempts of the defendants to cover ... |
|  | **Content:** Treatises |
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| 31. | 2-7 Mental Disability Law: Civil and Criminal @ 7-3 |
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|  | **Content:** Treatises |
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| 32. | 2-7 Mental Disability Law: Civil and Criminal @ 7-5 |
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|  | **Content:** Treatises |
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| 33. | 2-8A Police Civil Liability @ 8A.03 |
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|  | **Content:** Treatises |
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| 34. | 2-21 Punitive Damages @ 21.3 |
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| 35. | 4-20 Treatise on Health Care Law @ 20.13 |
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|  | **Content:** Treatises |
| **Briefs** |
| 36. | KHAN v. CHOWDHURY2013 U.S. Briefs 1479, 2014 U.S. S. Ct. Briefs LEXIS 2662 |
|  |  |
|  | **Content:** Court Documents | **Date:** July 30, 2014 |
|  |  |
| 37. | KHAN v. CHOWDHURY2013 U.S. Briefs 1479, 2014 U.S. S. Ct. Briefs LEXIS 2204 |
|  |  |
|  | **Content:** Court Documents | **Date:** June 11, 2014 |
|  |  |
| 38. | In re PHELPS2013 U.S. Briefs 370, 2013 U.S. S. Ct. Briefs LEXIS 3981 |
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|  | **Content:** Court Documents | **Date:** Aug. 28, 2013 |
|  |  |
| 39. | KENNETH JOHN NARDELLI and TAMMY M. NARDELLI, husband and wife, Petitioners, v. METROPOLITAN GROUP PROPERTY AND CASUALTY INSURANCE COMPANY, a Rhode Island corporation; METROPOLITAN PROPERTY AND CASUALTY INSURANCE COMPANY, a Rhode Island corporation, Respondents.2012 U.S. Briefs 1225, 2013 U.S. S. Ct. Briefs LEXIS 1867 |
|  |  |
|  | **Content:** Court Documents | **Date:** Apr. 8, 2013 |
|  |  |
| 40. | SHANDONG LINGLONG RUBBER CO., LTD., n/k/a LINGLONG GROUP CO., LTD.; SHANDONG LINGLONG TIRE CO., LTD.; AL DOBOWI LTD.; AL DOBOWI TYRE CO., LLC; TYREX INTERNATIONAL, LTD.; and TYREX INTERNATIONAL RUBBER CO., LTD., Petitioners, v. TIRE ENGINEERING & DISTRIBUTION, LLC; JORDAN FISHMAN; BEARCAT TIRE A.R.L.; and BCATCO A.R.L., Respondents.2012 U.S. Briefs 15084, 2012 U.S. S. Ct. Briefs LEXIS 4349 |
|  |  |
|  | **Content:** Court Documents | **Date:** Oct. 9, 2012 |
|  |  |
| 41. | MIRANDA-MARIN v. RODRIGUEZ-GARCIA2010 U.S. Briefs 667, 2010 U.S. S. Ct. Briefs LEXIS 4561 |
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|  | **Content:** Court Documents | **Date:** Nov. 18, 2010 |
|  |  |
| 42. | REGIONS BANK, GUARDIAN OF THE ESTATE OF KIMBERLY RENEA SMITH v. BMW NORTH AMERICA, INC.2005 U.S. Briefs 375A, 2005 U.S. S. Ct. Briefs LEXIS 1831 |
|  |  |
|  | **Content:** Court Documents | **Date:** Sept. 22, 2005 |
|  |  |
| 43. | RLI v. WOOD RECYCLING, INC.2006 U.S. 1st Cir. Briefs 712424, 2007 U.S. 1st Cir. Briefs LEXIS 2 |
|  |  |
|  | **Content:** Court Documents | **Date:** May 23, 2007 |
|  |  |
| 44. | ALMEYDA v. MUNICIPALITY OF AGUADILLA2004 U.S. 1st Cir. Briefs 2413A, 2005 U.S. 1st Cir. Briefs LEXIS 183 |
|  |  |
|  | **Content:** Court Documents | **Date:** Dec. 22, 2005 |
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| 45. | RIVERDALE v. PIMPARE2004 U.S. 1st Cir. Briefs 1626, 2004 U.S. 1st Cir. Briefs LEXIS 47 |
|  |  |
|  | **Content:** Court Documents | **Date:** Sept. 8, 2004 |
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| 46. | ACEVEDO-GARCIA v. VERA-MONROIG2002 U.S. 1st Cir. Briefs 1139, 2002 U.S. 1st Cir. Briefs LEXIS 103 |
|  |  |
|  | **Content:** Court Documents | **Date:** Dec. 23, 2002 |
|  |  |
| 47. | J.A. JONES ENVTL. SERVS. CO. v. NORTH AMERICAN SPECIALTY INS. CO.2001 U.S. 6th Cir. Briefs 1766, 2002 U.S. 6th Cir. Briefs LEXIS 119 |
|  |  |
|  | **Content:** Court Documents | **Date:** Feb. 11, 2002 |
|  |  |
| 48. | CALLAHAN v. FERMON2005 U.S. 7th Cir. Briefs 4313, 2007 U.S. 7th Cir. Briefs LEXIS 920 |
|  |  |
|  | **Content:** Court Documents | **Date:** Sept. 18, 2007 |
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| 49. | O2 MICRO INT'L LTD. v. BEYOND INNOVATION TECH. CO., LTD., Defendant-Appellant, & FSP GROUP & SPI ELEC. CO., LTD., Defendants-Appellants, & LIEN CHANG ELEC. ENTERPRISE CO., LTD.2007 U.S. Fed. Cir. Briefs 1302, 2007 U.S. Fed. Cir. Briefs LEXIS 730, 1 Exp. Wit. 228662, 1 Exp. Wit. 287844 |
|  |  |
|  | **Content:** Court Documents | **Date:** Nov. 5, 2007 |
|  |  |
| 50. | UNITED STATES OF AMERICA, Plaintiff, v. $(1$) Eliezer RIVERA GONZALEZ, $(2$) Juan MORALES ROSADO, $(3$) Jose PACHECO CRUZ, $(4$) Carlos PAGAN FERRER, $(5$) Elias PEROCIER MORALES, $(6$) Aaron VIDAL MALDONADO, Defendants.2008 U.S. Dist. Ct. Briefs 991766, 2009 U.S. Dist. Ct. Briefs LEXIS 182 |
|  |  |
|  | **Content:** Court Documents | **Date:** June 2, 2009 |
|  |  |
| 51. | CORNWELL ENTERTAINMENT, INC. (f/k/a CEI ENTERPRISES, INC. and CORNWELL ENTERPRISES, INC.), PATRICIA D. CORNWELL, and STACI GRUBER, Ph.D., Plaintiffs, v. ANCHIN, BLOCK & ANCHIN LLP, and EVAN H. SNAPPER, Defendants.2013 U.S. Dist. Ct. Briefs LEXIS 3414 |
|  |  |
|  | **Content:** Court Documents | **Date:** July 19, 2013 |
|  |  |
| 52. | UNITED STATES v. EATON2012 U.S. Dist. Ct. Briefs LEXIS 11653 |
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|  | **Content:** Court Documents | **Date:** Aug. 2, 2012 |
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| 53. | RAMIREZ v. COUNTY OF LOS ANGELES2012 U.S. Dist. Ct. Briefs LEXIS 16573 |
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|  | **Content:** Court Documents | **Date:** May 31, 2012 |
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| 54. | RAMIREZ v. COUNTY OF LOS ANGELES2012 U.S. Dist. Ct. Briefs LEXIS 16430 |
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| 55. | PHELPS v. GRONDOLSKY2012 U.S. Dist. Ct. Briefs LEXIS 2882 |
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|  | **Content:** Court Documents | **Date:** Feb. 4, 2012 |
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| 56. | KATONA v. CITY & COUNTY OF SAN FRANCISCO2011 CA S. Ct. Briefs 92370, 2011 CA S. Ct. Briefs LEXIS 641 |
|  |  |
|  | **Content:** Court Documents | **Date:** Apr. 19, 2011 |
|  |  |
| 57. | LEGACY ACADEMY, INC., et al., Appellants, v. MAMILOVE, LLC, et al., Appellees,2014 GA S. Ct. Briefs 83770, 2014 GA S. Ct. Briefs LEXIS 1177 |
|  |  |
|  | **Content:** Court Documents | **Date:** Dec. 15, 2014 |
|  |  |
| 58. | ELLIOT MENKOWITZ, M.D., Appellant/Cross-Appellee v. PEERLESS PUBLICATIONS, INC. and ERIK ENGQUIST, Appellees/Cross-Appellants2014 PA Sup. Ct. Briefs 891832, 2015 PA Sup. Ct. Briefs LEXIS 59 |
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|  | **Content:** Court Documents | **Date:** Mar. 11, 2015 |
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| 59. | MENKOWITZ v. PEERLESS PUBLS., INC.2015 PA Sup. Ct. Briefs LEXIS 6789 |
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|  | **Content:** Court Documents | **Date:** Mar. 11, 2015 |
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| 60. | MISSOURI PAC. R.R. CO. v. LIMMER2006 TX S. Ct. Briefs 296790, 2007 TX S. Ct. Briefs LEXIS 716 |
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|  | **Content:** Court Documents | **Date:** May 31, 2007 |
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| 61. | MISSOURI PAC. R.R. CO. v. LIMMER2006 TX S. Ct. Briefs 296790, 2006 TX S. Ct. Briefs LEXIS 773 |
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|  | **Content:** Court Documents | **Date:** Dec. 22, 2006 |
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| 62. | MISSOURI PAC. R.R. CO. v. LIMMER2006 TX S. Ct. Briefs 296790, 2006 TX S. Ct. Briefs LEXIS 767 |
|  |  |
|  | **Content:** Court Documents | **Date:** Mar. 30, 2006 |
|  |  |
| 63. | DEW v. CROWN DERRICK ERECTORS, INC.2003 TX S. Ct. Briefs 1128, 2004 TX S. Ct. Briefs LEXIS 688 |
|  |  |
|  | **Content:** Court Documents | **Date:** Aug. 16, 2004 |
|  |  |
| 64. | ARTURO NERI PRADO, Appellant vs. CITY OF FREDERICKSBURG POLICE DEPT. GORDON D. GIPSON CLINT STEWART CLEM B. CASTILLO ROBERT M. GOODRICH BILLY JIVIDEN MIKE COLWELL, Appellee 's2011 TX S. Ct. Briefs LEXIS 2399 |
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|  | **Content:** Court Documents | **Date:** June 7, 2011 |
| **Motions** |
| 65. | Vasquez v. PMB Enterprises West2008 U.S. Dist. Ct. Motions 111073, 2010 U.S. Dist. Ct. Motions LEXIS 35729 |
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|  | **Content:** Court Documents | **Date:** May 17, 2010 |
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| 66. | SHANNON v. SASSEVILLE2008 U.S. Dist. Ct. Motions 550864, 2010 U.S. Dist. Ct. Motions LEXIS 231 |
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|  | **Content:** Court Documents | **Date:** Jan. 31, 2010 |
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| 67. | DISABILITY LAW CTR. OF ALASKA, INC. v. NORTH STAR BEHAVIORAL HEALTH SYS.2007 U.S. Dist. Ct. Motions 490016, 2008 U.S. Dist. Ct. Motions LEXIS 26146 |
|  |  |
|  | **Content:** Court Documents | **Date:** Mar. 18, 2008 |
|  |  |
| 68. | SBT HOLDINGS v. TOWN OF WESTMINSTER2007 U.S. Dist. Ct. Motions 40116, 2007 U.S. Dist. Ct. Motions LEXIS 52695 |
|  |  |
|  | **Content:** Court Documents | **Date:** Aug. 21, 2007 |
|  |  |
| 69. | SEGUROS CARACAS de LIBERTY MUTUAL v. GOLDMAN SACHS & CO.2006 U.S. Dist. Ct. Motions 10035, 2007 U.S. Dist. Ct. Motions LEXIS 11324 |
|  |  |
|  | **Content:** Court Documents | **Date:** June 29, 2007 |
|  |  |
| 70. | TSE v. UBS FIN. SERVS.2003 U.S. Dist. Ct. Motions 6234, 2007 U.S. Dist. Ct. Motions LEXIS 63193 |
|  |  |
|  | **Content:** Court Documents | **Date:** June 13, 2007 |
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| 71. | JAMES v. HARRIS COUNTY SHERIFF'S DEP'T2004 U.S. Dist. Ct. Motions 3576, 2007 U.S. Dist. Ct. Motions LEXIS 14895 |
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|  | **Content:** Court Documents | **Date:** Mar. 14, 2007 |
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| 72. | BERNIER v. UNICCO SERV. CO.2004 U.S. Dist. Ct. Motions 847163, 2006 U.S. Dist. Ct. Motions LEXIS 82466 |
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|  | **Content:** Court Documents | **Date:** May 18, 2006 |
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| 73. | BERNIER v. UNICCO SERV. CO.2004 U.S. Dist. Ct. Motions 847163, 2006 U.S. Dist. Ct. Motions LEXIS 82464 |
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|  | **Content:** Court Documents | **Date:** May 1, 2006 |
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| 74. | AGBUNAG v. BUTENSKY2012 FL Cir. Ct. Motions LEXIS 14902 |
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| 75. | TULLO v. R.J. REYNOLDS TOBACCO CO.2011 FL Cir. Ct. Motions LEXIS 5772 |
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|  | **Content:** Court Documents | **Date:** May 9, 2011 |
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| 76. | JOHNSON v. CONWAY2013 U.S. Dist. Ct. Pleadings LEXIS 5942 |
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**Legend**

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|  | Caution - Possible negative treatment |  | Yellow - Caution Level Phrase |
|  | Positive - Positive treatment is indicated |  | Green - Positive Level Phrase |
|  | Analysis - Citing Refs. With Analysis Available |  | Blue - Neutral Level Phrase |
|  | Cited - Citation information available |  | Light Blue - No Analysis Phrase |
|  | Warning - Negative case treatment is indicated for statute |  |  |

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